United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

74-2317-8

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2317-8

UNITED STATES OF AMERICA,

Appellee,

—against—

CARLOS BAEZA,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

FISHER, ROSNER, & SCRIBNER,
Attorneys for Appellant,
401 Broadway
New York, N.Y. 10013

DAVID G. TRAGER,
United States Attorney for the Eastern District of New York,
Attorney for the United States of America.

UNITED STATES COURT OF APPEALS
FILED
APR 25 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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74 CR 14

MISHLER, J.
~~DOOLING, J.~~

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: Fried
vs.	for deft BAEZA:
X CARLOS BAEZA,	Fisher, Rosner & Scribner
JUAN OSORIO. a/k/a "Coco",	401 Broadway, NYC.
GILBERTO MORALES,	925-8844
VICTOR CONTRERAS,	
X ALFONSO MELO OBANDO,	For Defendant: BAEZA-Thomas J.
X ALFREDO VARGAS VEGA,	O'Brien-2 Penn. Plaza. N.Y.
ENRIQUE MUNOZ,	Suite 2690- 947-6147
JOHN DOE, a/k/a "Lucho"	VARGAS-VEGA- Jack Sachs-401
JOHN DOE, a/k/a "Jose"	Broadway, N.Y. 431-6990
JOHN DOE, a/k/a "Juan"	

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED					
			DATE	NAME	RECEIVED		DISBURSED	
Fine,			10/4/74	Notice of appeal(NO fee)				
Clerk,				(OBANDO and VEGA)				
Marshal,			3-18-75	Notice of Appeal } Baeza	5	—		
Attorney,			3-19-75	Paid to Treas }			5	—
Commissioner's Court,								
Witnesses,								

DATE	PROCEEDINGS
-9-74	Before Judd, J- Indictment filed ordered sealed by the Court - Bench Warrants Ordered.
-20-74	Bench warrants issued
3-29-74	Bench Warrant Issued
5-6-74	Bench warrant retd and filed- executed
5-6-74	Before DOOLING,J.- Case called- Indictment ordered unsealed by the court- Deft produced on a bench warrant- M. Mensa sworn as interpreter-Thomas O'Brien assigned as counsel present- Deft arraigned and enters a plea of not guilty- Bail set at $500,000.00 (CARLOS BAEZA)
5-6-74	By DOOLING,J.-Order appointing counsel filed (BAEZA)-Financial Affidavit filed
5-7-74	Before DOOLING,J. - Case called- DOBANDO and counsel S. Chrein of Legal

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DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
	to be relieved as counsel- Motion granted-Deft VEGA and counsel George Sheinberg present- Mr. Sheinberg moves to be relived as counsel and to be retained as counsel for deft OBANDO- Decision reserved		
5-7-74	By DOOLING,J.- Order appointing counsel filed (VARGAS-VEGA)		
5-7-74	Notice of readiness for trial filed		
5-13-74	Before DOOLING J - case called - deft VARGAS-VEGA & counsel J. Sachs present - Margarita Mensa sworn as interpreter - deft arraigned and enters a plea of not guilty - deft continued in custody.		
5-13-74	Letter to A.U.S.A. Watson from Thomas O'Brien, esq. filed re:deft Baeza and demands for discovery and inspection		
-17-74	Letter from Jack Sachs, esq. to Chambers dated 5-16-74 filed Re:deft Vega		
5-22-74	Notice of Motion filed, ret. May 24, 1974, for dismissal of the Indictment etc. (deft ALFONSO MELO O'BANDO)		
/24/74	Before DOOLING,J.- Case called- Deft A. OBANDO and counsel G. Sheinberg present- [illegible] Rodriguez sworn as interpreter- Deft arraigned and enters a plea of not guilty-Deft's motion to dismiss the indictment argued -Sealed affidavit ordered unsealed-Motion denied-Deft moves for a reduction of bail-Motion denied.		
6-4-74	Before MOSHLER, CH J - case called - Oral motion by deft BIAZA for Bill of Particulars, granted in part as indicated on the record; oral motion by deft BIAZA for a continuance of the trial is respectfully referred to Judge Dooling.		
6-7-74	Notice of Appearance filed (CARLOS BAEZA)		
6-14-74	Voucher for Expert Services filed (Carloa Baeza) Gerardo Sanchez for translation, xxx etc.		
6-17-74	Notice of motion for a continuance and or severance (BAEZA)		
6-17-74	Before DOOLING J - case called - Libya Clancy sworn as interpreter - deft BAEZA & counsel Alan Scribner present; deft Melo Obando & counsel George Sheinberg present; deft Vargas Vega present with counsel Jack Sachs - deft Baeza's motion for an adjournment or a severance - motion to sever is denied without prejudice -case marked ready and passed to follow US vs. James Brooks, 69 CR-245.		
-19-74	Before DOOLING J - case called - Deft BAEZA & counsel A.Schreiber present - deft Obando & counsel George Sheinberg present - deft Vega present without counsel - Margarita Mensa sworn as interpreter - Ivan Fisher another counsel for deft Baeza reported via conference telephone call from Argentina Conference held - motions scheduled for June 20,1974.		

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DATE	PROCEEDINGS
6-20-74	Before DOOLING J - case called - defts present with counsels - Margarita Mensa sworn as interpreter - deft Baeza moves for an adjournment of 3 weeks - Granted - trial scheduled for July 9,1973. Deft Baeza moves to take the deposition of deft Oasario and other witnesses via video tape - Govt and other defts not opposing - Motion granted - submit Order on consent.
6-21-74	By DOOLING J.- Order filed that deposition of co-deft Osorio be taken in Buenos Aires, Argentina on or before 7-8-74, Ordered that the deposition of others named in order be taken on or before 7-8-74, Order that expenses of Geroge Sheinberg, and Jack Sachs shall be paid by the Govt- Ordered that deposition may be taken through the use of video tape- Ordered that at time of the taking of the deposition defts BAEZA, OBANDO and VEGA shall be produced by the U.S. Marshal, etc.
6-21-74	Before DOOLING J.- Case called- Deft BAEZA and counsel Ivan Fisher present deft VEGA and counsel Jack Sachs present- Deft OBANDO and counsel present Beroge Sheinberg not present- Margaret Mensa sworn as interpreter-Order for taking deposition signed
7-2-74	Letter from Judge Mishler dated 7-2-74 that trial of deft Baeza, Varga Vega, and Obando has been advanced to 7-8-74 at 10:00 A.M.
7-8-74	Before MISHLER, CH.J.- Case called- Defts Baeza, Vega and Obando present with counsel-Pre-trial conference set down for 7-11-74 at 10:00 A.M. Case reset for trial on 7-22-74 at 10:00 A.M.
7-11-74	Before MISHLER, Ch J - case called - defts BAEZA, VEGA & OBANDO present with counsels - Interpreter M.Mensa present - pre trial conference held - Autobility and suppression hearing held - Both sides rest - motion to suppress as to deft Obando is denied - decision reserved as to deft Vega - Briefs to be submitted - hearing concluded.
7-12-74	Stenographers transcript dated July 11, 1974 filed.
7-17-74	Govt's memorandum in opposition to motion to suppress evidence, etc. obtained from deft Vargas Vega filed
7-22-74	Before MISHLER, CH J - case called - defts & counsels present - defts BAEZA & OBANDO motions for severance - motions denied - trial ordered & BEGUN - Jury selected and sworn - trial contd to July 24, 1974 at 9:30 am.
7-24-74	Before MISHLER, CH J -case called - defts & counsels & Interpreters Maria Elena Cardenas and Emil Rodriguez present - Trial resumed - Trial contd to July 25, 1974 at 9:30 am.

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DATE	PROCEEDINGS
7-25-74	Before MISHLER, CH J - case called - defts & counsels & interpreters present - trial resumed - trial contd to July 29, 1974.
7-29-74	By MISHLER, CH J - Order filed [illegible] placed in vault ordered sealed by Ch.Judge Mishler.
7-29-74	Before MISHLER, CH.J.- Case called- Defts and counsels present- Interpre present- Trial resumed- Motion by Mr. Fisher and Mr. Sabbs for a judgment acquittal etc.- motion denied- Motion by Mr. Sheinberg for a severance an judgment of acquittalletc.- motions denied- Trial contd to 7-30-74 at 9:3 ,(BAEZA, VARGAS VEGA, and OBANDO)
7-30-74	Before MISHLER, CH - case called - defts & counsels & interpreters present - trial resumed - alt. Juror #1 excused by Court with the consent of all attys - alt. Juror #2 now alternate Juror #1. Deft Carlos Baeza rests - deft Melo/Obando rests - deft Alfredo Vargas-Vega rests - trial contd to July 31, 1974 at 9:30 am.
7-31-74	Before MISHLER, CH J - case called - defts & counsels & interpreters present - trial resumed - trial contd to Aug. 5, 1974.
8-2-74	By MISHLER, CH.J.- Order filed and ordered sealed by the court
8-5-74	Before MISHLER, CH.J.- Case called- Defts Bausa, Vega and Obando present with counsel-Interpreter Emil Rodrigues present- Interpreter Margarita Mensa present- Trial resumed-Trial contd to 8-6-74 at 9:30 A.M.
8-6-74	Before MISHLER, CH J.- case called - defts BAEZA, VEGA & OBANDO present with attys - trial resumed - Interpreters Emil Rodriguez and Maria Cardenas present - court ordered Govt Ex.#3500-17 resealed. Govt & defts rest - motion by the defts for a judgment of acquittal - denied - trial contd to Aug. 7, 1974 at 10:00 am.
8-6-74	By MISHLER, CH J - Order of sustenance filed - lunch 14 persons.
8-7-74	Before Mishler, Ch J - case called - defts Baeza, Vega & Obando present with counsels - trial resumed - Interpreters Emil Rodriguez and Maria Cardenas present - at 11:50 AM the Jury retired for deliberations - motion by defts Baeza & Obando to dismiss the indictment is denied. Jury will resume deliberations on August 8, 1974 at 10:00 am.
8-7-74	By Mishler, Ch J - Order of sustenance filed (Lunch 14 persons)
8-8-74	Before MISHLER, CH J - case called - defts Baeza, Vega & Obando present with counsels - Interpreters E.Rodriguez and Marie Cardenas present - trial resumed - at 7:10 PM the Jury returned and rendered a verdict of guilty as to all 3 defts. Jury polled and discharged - all motions reserved until time of sentence - sentencing adjd without date - trial concluded.

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DATE	PROCEEDINGS
8-8-74	By Mishler, Ch J - 2 Orders of Sustenance filed (Lunch & Dinner)
8-19-74	Voucher for Expert Services filed(VEGA)
9-10-74	10 Volumes of stenographic transcripts filed (pgs 190 to 1526)
9-12-74	Stenographic transcript filed dated July 8, 1974.
9-20-74	Affidavit of Bernard Fried(A.U.S.A.) Filed
10/4/74	Before MISHLER, CH.J.- Case called- Defts and counsel present- Interpreters present- Deft'OBANDO'S motion to dismiss for lack of speedy trial argued- Defts OBANDO and VEGA sentenced to imprisonment for a period of 2 years- deft Obando also sentenced to a special parole term of 10 years- deft VEGA sentenced to an unsupervised special parole term of 10 years- Special conditions of the special parole term is that both defts not re-enter the U.S. or its territories during his special parole term- Clerk to file notice of appeal without fee as to both defts(OBANDO and VEG
10/4/74	Judgement and Commitment filed- certified copies to Marshal (OBANDO and VEGA)
10/4/74	Notice of appeal filed without fee (OBANDO and VEGA)
0/4/74	Docket entries and duplicate of notice of appeal mailed to court of appeals(OBANDO and VEGA)
10-4-74	Before Mishler, Ch J - case called - sentence as to deft CARLOS BAEZA adjd to Nov. 15, 1974 on consent.
10-10-74	Voucher forwarded to the Court of Appeals for approval. (Alfredo Vargas Vega)
10-15-74	Certified copies of Judgments & Commitments retd and filed. Defts OBANDO & VEGA delivered to Federal Detention Headquarters.
10/15/74	Stenographers Transcript dated 7/8/74 filed
11/11/74	Letter from Ivan Fisher, esq. to chambers filed re:adjournment of sentence of deft BAEZA
11/11/74	Letter to Ivan Fisher, esq. from chambers filed re:adjourning sentence to 12/20/74 at 10:00 A.M.
1/11/74	Voucher for compensation of counsel filed (VARGAS-VEGA)
11-15-74	Before MISHLER, CH J - sentence adjd to Dec. 20, 1974 on consent (CARLOS BAEZA)
12/20/74	Before MISHLER,CH.J.- Case called- Sentence of deft BAEZA adjd to 1/17/7 on consent
12/24/74	Record on appeal certified and handed to William Austin for delivery to c of a (VEGA)
/27/74	Acknowledgment received from court of appeals for receipt of record on appeal

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DATE	PROCEEDINGS
1/17/75	Before MISHLER, CH.J.- Case called- Sentence adjd to 2/14/75 on consent (BAEZA)
1/17/75	Copy of letter from Ivan Fisher, esq. to chambers filed re;request for continuance
2/6/75	By MISHLER, CH.J.- Order ~~appointing~~ authorizing transcription of minutes filed (OBANDO, VEGA)
2/19/75	Certified copy of Order received from court of appeals and filed that copy of transcript of testimony shall be filed with the Clerk, of District Court on or before 3/21/75
2-21-75	Stenographers transcript filed dated 5-24-74 (Melo Obando)
3/5/75	Voucher for Expert Serrvices filed.
3-11-75	Before Mishler, Ch J - case called - deft Baeza & counsel Ivan Fisher present - Libya Clancy interpreter sworn - hearing held as to the jurisdictional question - hearing contd to 3-12-75.
3-12-75	Before MISHLER, CH J - case called - deft BAEZA & counsel Ivan Fisher present - Interpreter L.Clancy present - Jurisdictional hearing contd - Hearing contd to Mar. 13, 1975.
3-13-75	Before MISHLER, CH J - case called - deft Baeza & counsel present - hearing contd -Interpreter L.Clancy present - hearing concluded - decision reserved.
3-13-75	Before MISHLER, CH J - case called - deft BAEZA & counsel Ivan Fisher present - Interpreter Emil Rodriguez present - At the end of the jurisdictional hearing, the Court denied the motion to dismiss the Indictment as indicated on the record. Deft Baeza sentenced to a term of imprisonment of 8 years plus special parole term of 10 years - special conditions of special parole is that the deft is not to re-enter the U.S., its territories or possessions during his parole term.Court advised the deft of his right to appeal.
3-13-75	Judgment & Commitment filed - certified copies to Marshal (CARLOS BAEZA
3-18-75	Stenographers transcript dated 3-13-75 filed.
3/18/75	Notice of appeal filed (BAEZA)
3/18/75	Docket entries and duplicate of notice of appeal mailed to court of appeals (BAEZA)
3-19-75	Supplemental Index to Record on Appeal mailed to the C of A (CARLOS BAEZA
3/28/75	By MISHLER, CH.J.- Memorandum of Decision and Order filed denying denying deft BAEZA'S claim that court acquired jurisdiction over him through unlawful conduct of american agents, etc.
3/28/75	Acknowledgment received from c of a for receipt of supplemental record

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DATE	PROCEEDINGS
4/16/75	Stenographers Transcript dated 6/4/75 filed
4/17/75.	Stenographers Transcripts dated 3/11/75 and 3/12/75 filed

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INDICTMENT

TPP:BJF:dc
F.#741,022

DOOLING 74CR 14

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

-against-

CARLOS BAEZA,
JUAN OSORIO a/k/a "Coco"
GILBERTO MORALES,
VICTOR CONTRERAS,
ALFONSO MELO OBANDO,
ALFREDO VARGAS VEGA,
ENRIQUE MUNOZ,
JOHN DOE a/k/a "Lucho"
JOHN DOE a/k/a "Jose"
JOHN DOE a/k/a "Juan",

Defendants.

IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.
JAN 9 1974
TIME A.M.
P.M.

SUPERSEDING INDICTMENT

Cr. No.

(T. 21, U.S.C., §846
21, U.S.C., §963
21, U.S.C., §952(a)
21, U.S.C., §960(a)(1)
18, U.S.C., §2)

74 CR 314

- - - - - - - - - - - - - - - - - X

THE GRAND JURY CHARGES:

On or about and between the 1st day of July 1972, and the 18th day of November 1973, both dates being approximate and inclusive, within the Eastern District of New York, and elsewhere, the defendants CARLOS BAEZA, JUAN OSORIO a/k/a "Coco", GILBERTO MORALES, VICTOR CONTRERAS, ALFONSO MELO OBANDO, ALFREDO VARGAS VEGA, ENRIQUE MUNOZ, JOHN DOE a/k/a "Lucho", JOHN DOE a/k/a "Jose", and JOHN DOE a/k/a "Juan", together with Luis Hernando Marino, named as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 812, 841(a)(1), 841 (b)(1)(A), 952 (a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

1. It was a part of said conspiracy that the defendants knowingly and intentionally would import large amounts of cocaine, a Schedule II narcotic drug controlled substance, into the United States from places outside thereof.

2. It was further a part of said conspiracy that the defendants knowingly and intentionally would distribute and possess with intent to distribute large amounts of cocaine,

3. It was further a part of said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the Eastern District of New York and elsewhere:

OVERT ACTS

1. In or about November 1972, defendant MUNOZ met with co-conspirator Marino in Queens, New York.

2. On or about November 23, 1972 defendant JOHN DOE a/k/a "Juan" delivered approximately thirty-two and one-half (32-1/2) pounds of cocaine to co-conspirator Marino in Montreal, Canada.

3. In or about June 1973, defendants BAEZA and OSORIO met with another in Santiago, Chile.

4. On or about August 7, 1973, defendant CONTRERAS delivered a quantity of cocaine to another in Montreal, Canada.

5. On or about August 8, 1973, defendant MORALES received approximately twenty-five and one-quarter (25-1/4) pounds of cocaine from another in Montreal, Canada.

6. On or about November 16, 1973, defendants OBANDO and VEGA met in New York, New York.

7. On or about November 18, 1973, defendant JOHN DOE a/k/a "Lucho" received thirteen thousand ($13,000) United States dollars from another in Santiago, Chile.

(Title 21, United States Code, §846 and §963.)

A TRUE BILL

FOREMAN

Edward J. Boyd IV

UNITED STATES ATTORNEY

2. It was further a part of said conspiracy that the defendants knowingly and intentionally would distribute and possess with intent to distribute large amounts of cocaine,

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MINUTES OF TOSCANINO HEARING

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

CARLOS BAEZA, : 74-CR-14

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

March 11, 1975
2:00 o'clock p.m.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
FEDERAL COURT HOUSE, ROOM 362
225 CADMAN PLAZA EAST
BROOKLYN, N. Y. 11201

TEL. ULSTER 2-7105-7106-7107

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for Eastern District of New York;

BY: BERNARD J. FRIED, ESQ.,
Assistant United States Attorney

IVAN FISHER, ESQ.,
Attorney for the Defendant

Pages 1 through 30 were sealed by Order of Judge Mishler, on Motion by Ivan Fisher, Esquire, Attorney for Defendant.

MR. FISHER: It will depend upon your Honor's ruling.

Your Honor, I think we can go back on the record --

THE COURT: Maybe the Government will give you the documents.

What are you talking about?

MR. FISHER: Well, these proceedings don't have to be at sidebar.

THE COURT: This is all open, these proceedings can be in the open courtroom.

(At this point both attorneys took positions in the open courtroom.)

MR.FISHER: If your Honor please, I call upon the Government to produce as if subpoenaed, and these would all be from Government agencies, the State Department, the CIA, the Drug Enforcement Administration, the United States Attorney's office, all documentary proof of payments made by any agents of the United States Government to any member of the Chilean Police for any purpose whatsoever, starting within the period beginning October 1, 1973 through and including June of 1974.

In connection with that, your Honor, I represent to the Court that on one occasion I was in Mr. George

Franguille's office, and this was in June of 1974 or thereabouts, that he asked to excuse himself saying he had to see the local police; that he left the door open and I saw him hand him money.

Two, a list of all United States Drug Enforcement Agents and CIA agents present in Chile between October of 1973 and June of 1974.

Three, all written communications --

THE COURT: All correspondence, not correspondence that involves Mr. Baeza?

MR. FISHER: I didn't ask for correspondence yet.

THE COURT: Any memoranda, any documents between the local police and any agency of our Government?

MR. FISHER: No, your Honor.

I didn't get to that, did I?

MR. FRIED: You said proof of all payments to the Chilean Police by the United States Government, that is in my notes.

MR. FISHER: Just money payments.

THE COURT: Well, you have proof of one payment, maybe you would like to take the stand and testify.

MR. FISHER: I would be delighted, your Honor.

THE COURT: Well,how does that relate to Mr. Baeza?

Let us say they paid a million dollars.

MR. FISHER: Ultimately in the middle of April, 1974 Mr. Baeza and numerous others were rounded up --

THE COURT: When?

MR. FISHER: April of 1974, April 17th, I think, your Honor.

THE COURT: April '74?

MR.FISHER: That is right.

Were rounded up by people, people supposedly functioning as Chilean Police whom I submit are in truth and fact agents of the United States Government, particularly the Drug Enforcement Administration --

THE COURT: Wasn't Mr. Franguille --

MR. FISHER: Franguille, yes.

THE COURT: Wasn't he in court, didn't he testify?

MR. FISHER: No, your Honor.

MR. FRIED: He did not testify in the original trial, there was reference to him, he was the Special Agent in charge of Santiago.

THE COURT: How often does he get here?

MR. FRIED: I have seen him up here I think once since last summer, that was in Washington.

THE COURT: Why don't you check around and see whether he is in the area.

MR. FRIED: I know he is not, somebody in our office spoke to him yesterday or on Friday in Santiago, Chile.

THE COURT: You want his records,right?

MR. FISHER: That is correct, your Honor.

Your Honor, since Mr. Fried has been eloquent with regard to things he told me, I have told Mr. Fisher about this incident prior to this occasion, and in addition I have told Mr. Fried that I thought Mr. Franguille should be a witness here and produce for these proceedings.

MR. FRIED: I never received a request from Mr. Fisher that he be produced at this particular proceeding.

MR. FISHER: Our recollections differ, mine is nevertheless quite certain,your Honor, that I did.

THE COURT: Is this the first time that you are making demand for these documents?

MR. FISHER: No, your Honor.

MR. FRIED: That is correct, your Honor, the documents Mr. Fisher has demanded, and I have a note, on March 3rd, he demanded from us several of the items that he is about to specify now to the Court and at about one o'clock this afternoon he finished the list and I received a list of 11 items today.

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THE COURT: Well, I know is that there are so many instant things, instant copy, instant suit, instant documents.

MR. FISHER: The documents to which I referred, your Honor, were requested, according to Mr. Fried, on March 3rd.

Thus far I should --

THE COURT: Do you have any of them?

MR. FRIED: No, your Honor.

On March 3rd, which you requested, according to my notes, that was the expulsion order, actually it was before March 3rd, a week before March 3rd because I gave you on March 3rd certain documents, but a week before March 3rd, and I don't have the date, it is not in my diary for some reason, but you requested from me the expulsion order, the Cecil activity reports and all cable traffic between the Drug Enforcement Administration, United States and South America, the Buenos Aires Regional Office and the Santiago Chilean office, and that I told you I didn't have.

MR. FISHER: Re- Baeza.

MR. FRIED: Yes, re Baeza, and I told you I would oppose the production of any of these.

You then called me I think last week and asked if I would accept a subpoena on behalf of the Drug

Enforcement Administration and the CIA, and I told you I had no power to do so.

THE COURT: Did you check to see whether there are any such documents in existence?

MR. FRIED: I have not had a check concerning payments or documents relating to the payment of the Chilean Police by the United States Government, I have not done that.

A list of DEA agents and CIA agents, I don't have that. There must be a list but I don't have one.

What I think is happening here is that I think that we are losing sight of the essential issue, what is happening here is that we are engaged in a sort of pre-trial discovery proceeding when we should be within the parameters of Toscanino, in which certain allegations should have been made, the Government would have to deny them, if it choosed to do so, if that would be appropriate, and then the defendant must come forward with credible evidence which purts us to the burden of going forward.

At this point the Government is being requested to open its file so that the allegations can be made when Mr. Fisher has stated for the record and told me all along that he has certain allegations,but we just don't know what these allegations are.

I don't think the Government should be required to produce cable traffic --

MR. FISHER: I will agree with Mr. Fried for the moment, but --

MR. FRIED: (Continuing) -- reports, memoranda and other types of written documents, reports concerning electronic surveillance, et cetera, et cetera,without us knowing what the allegations are.

THE COURT: I think Toscanino fore-closed any such general examination of the files of the agency. I think that what Toscanino said was that the defendant must come forward with some proof to show that there is some legitimacy to the claim before I even give you a hearing.

MR. FISHER: After the Government's denial, but first the Government must deny.

THE COURT: There was only one allegation so far.

Do you deny that allegation?

MR. FRIED: The Government denies that on November 9, 1973, in a subterranean chamber in Santiago, Chile, that Special Agent Charles Cecil conducted interrogation of the defendant Carlos Baeza;

It further denies that Special Agent Charles Cecil through a nod of his head caused the Defendant

Carlos Baeza to be tortured by electric prods placed against his body;

The Government denies --

THE COURT: I haven't re-read Toscanino but my recollection of it is that you don't even have to put any witnesses on to say that, you first must have proof that it happened, not just mere allegation.

MR. FISHER: Now that Mr.Fried has denied that, and that is in behalf of the Government -- that is correct, isn't it?

MR. FRIED: That is correct.

THE COURT: We will now proceed.

MR. FRIED: May I again for the sake of the record point out something which I think is essential to consider here, and that is that on November or whatever occurred on November 9, 1973 has to first be relevant. There is no question as it came out during the trial testimony -- during the deposition testimony that was taken in South America of relatives of this defendant that he was arrested on November 8, 1973, in Santiago, Chile, with co-defendant Jose Osorio and another individual, perhaps two other individuals --

THE COURT: November what?

MR. FRIED: November 8, 1973 -- '74, I am sorry -- 19 --

MR. FISHER: '73.

MR. FRIED: 1973, it has been so long now, I have a memorandum just November 8th, is it '73?

Well, that a short time thereafter he was released from custody in South America and he wasn't indicted in this district until January 11, 1974, and that it wasn't until May 5, 19 -- or May 4, 1974, that he was expelled having been arrested a few weeks prior in South America, and he was expelled to this country. In fact an affidavit was submitted by myself to Judge Dooling on January 11, 1974, which at that time was sealed and which was opened when the defendant Baeza was produced in this court on May 5th --

THE COURT: What date is it claimed that Mr. Cecil participated in --

MR. FRIED: November 8th, November 9, 1973.

THE COURT: November 8, 1973.

MR. FISHER: Mr. Fried is making an argument with regard to the relevancy of an allegation taken out of context. I haven't had an opportunity to state the defendant's position in its entirety, and I would appreciate that opportunity before arguments are addressed to specific portions thereof.

THE COURT: There must come a time when your allegations are closed.

Now, when did you --

MR. FISHER: Your Honor, as I have stated again and again I am only referring to that specific thing in the context of --

THE COURT: No, no, I might dismiss your claim out of hand for failure to follow the directions in this letter:

"You are also directed to signify the jurisdictional ground upon which you challenge the jurisdiction of this Court on or before Monday, March 10, 1975. In the event a hearing is necessary, it will be scheduled for Thursday, March 13, 1975."

(Continued on next page.)

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MR. FISHER: Your Honor, as I was addressing the Court at the side bar, at the bench, I related only the November 9th situation because that was the best instance out of others that I was going to refer to, and that related most directly to my request with regards to the polygraph examination; I did not at any time state that was all we are offering for proof --

THE COURT: Mr. Fisher, do you admit that you did not serve specifications as a direction of the Court on or about or before March 10, 1975?

MR. FISHER: Yes, sir, on specific reliance, and upon discussion with Mr. Puccio, your Honor.

THE COURT: Mr. Puccio does not run this Court. That was the Court's direction. He has no right to modify it.

Now I will give you one more direction:

Specify on the record now every allegation that you are ready to make against the Government, not piecemeal, everything.

Now if you are not ready, I will just dismiss it.

MR. FISHER: I am ready, your Honor.

THE COURT: Go ahead.

MR. FISHER: On or about November 8, 1973, at 862 Islada Street, the defendant, Carlos Baeza Baeza, Juan Jose Osorio, and I believe three or four other

family members of the Baeza family were arrested by the Chilean Police, acting at the request of and the direction of the United States Government, then represented in Santiago, Chile, by, amongst others, Charles Cecil, and George Franguille;

This arrest was precipitated --

THE COURT: How can our Government, through Mr. Franguille and Mr. Cecil, direct an arrest?

MR. FISHER: I will get to that, your Honor, chronologically, or I can jump ahead, if you wish?

THE COURT: You mean the arrest was first, then they participated?

MR. FISHER: Your Honor, the proof that this arrest was as a result of a request by the United States Agents of the Chilean Police came the following morning.

THE COURT: Go ahead.

MR. FISHER: The arrest, I am informed, was precipitated by the interception of a phone call made from 862 Islada Street by Juan Jose Orsorio to a woman, a girlfriend of his, which was intercepted by the Chilean authorities, and which information was gleaned from that interception, and which was relayed, I believe, to the American Agents.

I am trying to get her name.

Her name is Prade Arce.

After the arrest, Mr. Baeza, together with his family, and Orsorio, were taken to the Investigations Building, during which procedure a man named Inspector Folensal (phonetic), a Chilean Police Officer, appeared to be in charge.

THE COURT: It all sounds familiar, this testimony was offered at the trial -- or you wanted to offer it?

MR. FISHER: It goes well beyond that, your Honor.

They were questioned by the Chilean Police, and asked whether or not any of them had criminal records. Only the defendant's uncle, Orsua, answered in the affirmative, and he was thereupon beaten.

This was in the office of the Police Director, I'm not familiar with his title there, but his name was Poblete.

While these people were being held in Poblete's office, it was said that, and the defendant was able to overhear, that men are being sent, Policemen are being sent out to apprehend Enrique Munoz, and Munoz appeared in the company of Chilean Police Officers at or before 4:00 o'clock on that day.

No other questioning has occurred other than, "Do you have a criminal record?"

This continued until 6:00 o'clock in the morning,

nothing, just sitting there, waiting for something to happen. No one is permitted to make phone calls, no one is given food, no one is given liquor, they are permitted to use the bathroom facilities, handcuffed, no one is permitted to smoke. They were permitted to sleep on the floor.

Finally, at 6:00 A.M. in the morning of November 9th, they are taken to cells at the upper level of the Investigations Building. These cells are very, very small, they had no light, no bathroom facilities, nothing, they are the Chilean version of the American strip cell, there is a door with a narrow slit.

Two hours later, everyone is removed from the cells and brought back to Poblete's office.

And now Mr. Cecil arrives. Now with regard to the telephone call to Prade Arce, which apparently was four days before this, apparently the wireaap is on the girlfriend's house, and I believe that is in Curico. The girlfriend receives a call from Orsorio at Enrique Munoz's house, and Enrique Munoz had been arrested three or four days before because the Police are coming to get Orsorio, having been notified by the tap on the girlfriend that Orsorio had been making this phone call.

Now, Orsorio is not there when the Police arrive, but Munoz is, and he is arrested, and then released --

THE COURT: I'm sorry, Cecil, when does he arrive?

MR. FISHER: At 8:00 o'clock in the morning, at 8:15 Poblete arrives, and you will recall this was his office, between 11:00 A.M. and 11:30, Cecil arrives.

Again, up until this point, no one has been asked anything except, "Do you have a prior criminal record?"

Now, Mr. Cecil arrives in the company of another, apparently an American Agent, who is dark-skinned, but not black, wearing a brown raincoat. Cecil and this other man call Poblete aside and apparently converse, although I cannot offer to prove what was said.

Thereupon, Osorio and Munoz are taken from Poblete's office.

Ten to fifteen minutes later another Chilean Officer comes and takes Baeza from Poblete's office. Baeza is taken to a lower portion of the building, a subterranean room.

On Baeza's way down a set of steps, he sees Munoz climbing another set of steps, going in the opposite direction. Munoz's clothes are heavily bloodied.

When Baeza arrives in this underground room, there is present Cecil, this dark-skinned man, Poblete, another Chilean Police Officer, and Juan Jose Osorio.

Cecil then -- I should state this, your Honor, I

haven't, Baeza was handcuffed steadily every moment that I have described him in Poblete's office, the only time he wasn't handcuffed was when he was in his cell for two hours between 6:00 o'clock in the morning and 8:00 o'clock in the morning on November 9th.

Cecil then asked Baeza in Spanish, "We know" -- in substance -- "We know you brought someone" --

Your Honor, may I ask that Mr. Cecil be excluded at this point?

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(continued on next page.)

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MR. FRIED: Your Honor, I'm going to have to step outside and read these allegations to him because certain things --

MR. FISHER: I will withdraw the application.

"We know you brought someone to the airport, who?"

"Who did you go to the airport with?"

And Baeza does not respond or does not provide the information.

Mr. Cecil also inquires, "Where is the plant?" REferring to the manufacturing place where the cocaine is manufactured.

Again Mr. Baeza does not respond.

At this point Mr. Cecil nods to the Chilean police, they are present, who beat Mr. Baeza, punching him in the stomach with their fists six or seven times.

Then Mr. Baeza is blindfolded --

THE COURT: Who does the beating, the Chileans? Mr. Cecil doesn't?

MR. FISHER: That is correct, your Honor.

The handcuffs are now removed, he is then forced to walk a distance ultimately of about 30, 40 steps, which include going down about four or five steps to yet a lower building.

There Mr. Baeza is forced, is strapped to a

table, his back against the top of the table, his pants are ripped open and one electrode is placed on his side, one electrode is placed on hi s hand --

THE COURT: Head or hand?

MR. FISHER: Hand.

THE COURT: H-a-n-d.

MR. FISHER: Thigh and hand.

A handkerchief is put in his mouth and tied around his head. He is told, "When you wish to answer, lift up your finger like that." (Indicating)

For ten to fifteen minutes current is run through his body.

Then Poblete was sent to get another machine, and then four electrodes are used.

THE COURT: Is Mr. Cecil present all of this time?

MR. FISHER: I am getting to that, your Honor.

One on each side of Baeza's head, one on his testicles and one on his arm.

With the two machines the lights from the building go out temporarily, and at this point a a metal denture plate that Mr. Baeza had in his mought, well, he almost swallowed it. They release an arm and the gag, they take away the gag at Mr. Cecil's direction in order to let him take out the plate.

3 THE COURT: So he is present, Mr. Cecil is present all of this time?

MR. FISHER: Mr. Cecil, your Honor, all I can answer at this point is what Mr. Baeza would testify to.

He was blinded from the time that he went to that subterrean level except for the questioning by Mr. Cecil at the first lower level. He cannot state with his own eyes or his own ears that Cecil was present except that later when he is down in the lower level and when they used both machines and he almost swallowed his plate he hears Mr. Cecil say, "Let him take his -- the plate out of his mouth."

And then Cecil questions:

"Where is the lab?"

"Whom did you leave at the airport?"

"How many cars do you have?"

This electric torture took about an hour until one of the Chileans said, "Let him rest."

He is carried out.

The bag is removed, the blindfold is taken off, and he is brought back to Poblete's office, where his family and the Chilean's guarding them have still remained.

He is told by Poblete that the United States

directed that the entire family be tortured --

THE COURT: Those are the exact words, "The United States"?

MR. FISHER: No, no, your Honor.

May I have one moment, your Honor?

THE COURT: Sure.

(At this point Mr. Fisher conferred with the defendant Baeza.)

MR. FISHER: I was inferring.

Poblete said that he had orders to beat or torture the whole family, he didn't say specifically from whom.

When everyone is taken to cells I think at the next higher floor.

At about 6 O'clock that evening, everbody in Baeza's family except Baeza is asked to sign statements and they are released.

Now, at about 9:30 Munoz, that is Enrique Munoz, Osorio and Baeza are now placed in the same cell and for the first time since his apprehension he is fed coffee, sandwiches and a blanket or blankets were brought.

On November 10, at 12:00 in the afternoon, he is taken out and blindfolded, he is brought downstairs. No allegation is here made that Mr. Cecil or any other

agent was then present, we don't know, but significantly he is asked the same questions that Mr. Cecil asked the day before.

When he refuses to answer, he is again punched, he has again the electrodes and the current is applied this time just two electrodes, one on his head and one on his testicles.

THE COURT: And he refuses to tell them how many cars he has?

He suffers all of these horrible tortures and he won't tell how many cars he had?

MR. FISHER: That was the third question, the first question was: "Where is your lab?" And the second question was --

THE COURT: Why didn't he tell them how many cars he had?

MR. FISHER: That might be a good question for cross examination.

THE COURT: Or even lied about it, that is what you and I would have done, you and I would have lied about it.

MR. FISHER: I think I would have given them a complete statement upon seeing the machine.

THE COURT: Yes, I would think so. I would do the same thing.

But you certainly would have told them how many

cars you had or I would have lied about it.

MR. FISHER: Your Honor, it is very difficult to conjure up what one would do in a situation in which Baeza was thrust.

THE COURT: In that situation, you mean?

MR. FISHER: Yes.

THE COURT: In that situation.

MR. FISHER: Yes, in that situation.

He was brought back up to the cell where again he rejoins Munoz, that is Enrique Munoz and Juan Osorio. Nothing further happened that night.

He leans that -- and I should have mentioned that -- when Enrique Munoz was first brought to Poblete's office on November 8 he was in the company of two women, apparently they were released on November 10.

Now, your Honor, how restricted would I be in terms of Mr. Baeza's testimony?

In other words, what I am doing now really is just about giving word for word --

THE COURT: I will hear the whole story.

MR. FISHER: You want all the allegations first, in other words what I am doing --

THE COURT: I beg your pardon?

MR. FISHER: What I am doing thus far is I have

been following my notes almost word for word --

THE COURT: Go ahead.

MR. FISHER: On November 8 there is a situation that develops which, your Honor, arguably could be a crime if conducted in the United States in which Mr. Baeza might have been a participant, and I am at this point stating that something may have happened in that area on November 11, and I am stating nothing further at this point, reserving our rights.

THE COURT: I don't know what that means, you have a right against self incrimination on crimes that are committed in Chile?

MR. FISHER: Possibly, your honor.

THE COURT: Really?

He can't be prosecuted here for it, can he?

MR. FISHER: Not for that specific crime, but supposing Mr. Baeza's conviction were reversed and supposing there were a retrial and supposing this could be offered of proof of consciousness of guilt, if the Court tells me that nothing of this will be --

THE COURT: If he takes the stand it might very well be used against him.

MR. FISHER: Then I will exclude it in the offer.

I would claim his Fifth Amendment privilege,

your Honor.

THE COURT: I think the cases say that, don't they?

MR. FISHER: I am sorry?

THE COURT: The cases say that, Harris, Walder, it certainly cannot be used on direct.

MR. FISHER: If he takes the stand at a subsequent trial?

THE COURT: That is right.

MR. FISHER: I am sorry. I thought you meant here.

THE COURT: No.

MR. FISHER: Walder is a Fourth Amendment area, Harris is a Miranda situation, but you might be right without conceding it, that a court could wind up that far.

I would, I would reserve the right to argue strenuously against it.

THE COURT: You can argue strenuously against it.

MR. FISHER: Now Munoz, Enrique Munoz is permitted -- is released on I believe November 12, possibly November 11, I am not sure, November 11 or November 12, and in fact Munoz is escorted to the airport I believe by Chilean police officers.

THE COURT: Was Cecil present there?

MR. FISHER: Not to my knowledge, your Honor, however --

THE COURT: I am interested in the involvement of American agents.

MR. FISHER: Yes, your Honor.

THE COURT: There is no claim of involvement, that is Mr. Baeza's claim or your claim of involvement

MR. FISHER: At this point in time, and your Honor might recall having heard this case, there are some problems which occur with Munoz and his peregrinations into Canada and that delivery had not been affected and the purchasers hadn't arrived. It may well be that --

THE COURT: I don't remember.

MR. FISHER: Well, that I think is a fair statement, loose as it is, of the trial testimony.

THE COURT: I think the record will show that I have tried 30 or 40 cases since then.

MR. FISHER: Yes, your Honor.

On November 13 Mr. Baeza is transferred to a jail across the street from the Investigations Building, which is like a public jail.

Two hours after his transfer he appears before a Notary, his statement is taken, he is held in-

communicado between November 13 and November 15.

On November 15 the police bring him before a judge, and so also is Osorio similarly incarcerated in a public jail at this time.

THE COURT: Where are the other people, incidentally, Osorio and Munoz?

MR. FISHER: Munoz is a fugitive, Osorio is a fugitive in Buenos Aires, Argentina.

THE COURT: They are Mr. Baeza's fugitive, arent' they?

MR. FISHER: No, they were not.

THE COURT: Weren't you able to get the deposition of Osorio and present it to this jury?

MR. FISHER: Yes, but not with regard to what happened in the jail, your Honor.

THE COURT: He wouldn't testify to that?

MR. FISHER: No.

THE COURT: Did you ask him?

MR. FISHER: I am not at liberty to discuss that with your Honor.

THE COURT: Well, all I know is that you asked for time to go to South America to get all of this evidence for the trial, and that pu had, you had a television camera or video tape set up in your Associate's office down in Santiago -- was it?

And in a lawyer's office?

MR. FISHER: Santiago, and in each instance it was in a hotel room, your Honor.

THE COURT: All right, in a hotel room.

So I imagine that Mr. Munoz is available to you, he was available for testimony at the trial --

MR. FISHER: Mr. Munoz is available but Mr. Osorio is not available for a deposition in regard to these areas, your Honor.

MR. FRIED: That deposition was introduced into this court, the questions were just never asked at the time of the deposition by counsel for the defendant, certainly the Government did not go into it, it had no knowledge of these allegations at the time.

THE COURT: You excluded it because Mr. Baeza wanted to testify --

MR. FISHER: No, Mrs. Baeza, Mrs. Baeza.

THE COURT: Mr. Baeza did not take the stand.

MR. FISHER: No, your Honor.

THE COURT: It was Mrs. Baeza, Mrs. Baeza was present.

MR. FISHER: She testified through the deposition.

THE COURT: She testified through all of that?

MR. FISHER: Through deposition.

THE COURT: Did I allow that to come into the trial?

MR. FRIED: No, your Honor.

MR. FISHER: No, your Honor. You let a tiny bit in but not the greatest part.

THE COURT: A tiny bit.

I understand you have the deposition for this hearing.

MR. FISHER: It will be offered in its entirety this time, your Honor.

THE COURT: I will hear it.

All right.

MR. FISHER: On November 15, after being questioned before a Chilean Judge, he is returned to jail.

At this point the questioning is -- well, he is shown the statements made to the notary --

THE COURT: The way I remember Mrs. Baeza testified at the deposition that he screamed in the middle of the night.

MR. FISHER: That's right, your Honor.

THE COURT: I remember that, I heard it outside of the hearing of the jury.

MR. FISHER: That is correct, your Honor.

On November 18 he was returned to the judge

again and at this point he is released.

We turn now to April of 1974 in Val Paraiso. At about 4:00 a.m. in the house of his aunt, Baeza is arrested at gunpoint, he is taken into a car, a white Impala, by four Chilean police.

In the backseat of the car there is a human swathed in a blanket and bound, lying on the floor of the car. He is taken to Santiago, a two and a half hour drive, arriving at 6:30 in the morning, where he is taken to the first of a number of police stations. He is put in a subterrean cell --

THE COURT: What has this figure that was bound got to do with it?

MR. FISHER: I am just telling you, your Honor, what the testimony will be.

On April 18 --

THE COURT: Is he otherwise identified?

MR. FISHER: No, your Honor.

THE COURT: Go ahead.

MR. FISHER: On April 18, the following day, he is taken to another police station on Huerfenso, where he is brought into a room and handcuffed to a chair. There he remains for two days, allowed only water, no food. He is released from it to go to the bathroom.

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Now I think we are on April 21, I know I just said the 18th, two days, but I think April 21, and and an inspector from the Supreme Court of Chile, pursuant to a writ of habaus corpus, which had been filed by the defendant's mother, is looking for Baeza. He asked for Baeza but Baeza is being held under another name, not given by Baeza but one created by the police.

The police deny that he is there.

The inspector is not in the room at this point, he is in a hallway, and there are two other people who are also, you know, incarcerated --

THE COURT: When you don't mention Mr. Cecil or Mr. Franguille, I assume they weren't present.

As far as you know, they did not participate in that particular incident?

MR. FISHER: Directly, there is no direct participation alleged, that is correct, your Honor.

THE COURT: All right.

(Cont'd on next page.)

MR. FISHER: A commotion begins, I believe that some of these prisoners were trying to attract the Inspector's attention.

The Inspector comes over and says, "I am looking for Carlos Baeza."

Mr. Baeza says, "I am he."

And n there is a dispute with the Police between the Inspector and the Police.

At 6:00 o'clock that evening he signs a paper for his release, but instead of being released, he is brought to another station in the back seat of a Citrone, handcuffed and on the floor, and that is their choice, not his.

The take his background, his history, at this third Police Station, and then he is placed in a cell. Still he has not been fed.

Two hours later he is taken out, handcuffed and blindfolded, he walks along an outside patio, and is brought into another cell.

He is put on a flat board, he is handcuffed, he is blindfolded, and he is punched in the stomach, excrement is forced into his mouth while his nose is held. His ears are boxed, or cuffed, or slapped. But no questioning. And this goes on for about ten to fifteen minutes.

He passed out, he wakes up in a barren cell, is taken out to be washed and fed.

At the next morning he is fed at the Police Officers' mess hall, or their equivalent. That is April 22nd.

Still on April 22nd, he is now taken in an armored car to another Police Station, where he sees Carlos Choy.

Carlos Choy is a Chilean national, who is brought to the United States under similar circumstances, and with regard to whom the United States ultimately represented that they had brought the wrong man up, and he was ultimately released.

This is on information and belief, your Honor.

Now, in this armored car, he and Choy are in it, and at about 12:30 they drove by a stadium, which is a mass incarceration area in Santiago, Santiago, Chile, where Jorge Dabed and Lazo -- I think Mr. Fried could --

MR. FRIED: Sergio Lazo.

There is a case pending in this court, docket number 74-CR-493, before Judge Costantino.

MR. FISHER: The four of them are taken to Valparaiso where they arrive at about 3:00 o'clock, and brought to a Government building known as Intendencia.

The Police in the armored car were communicating

with others, I don't know who, on a walkie-talkie.

From there they are taken -- they don't leave the armored car -- They are taken to a fortress called, known locally as Deja Verde, which is actually the Palacio Delareiza.

More walkie-talkie communication, again you don't know with whom, by the Police.

They are taken back to the Intendencia building, they are brought into a room, and forced to stand with their hands behind their heads.

They are questioned briefly, and at this point the Alvear brothers, Jorge and Encristani, are seen. These two men were allegedly involved in a cocaine importation connected to Rafael Mellafe, who was charged in the Southern District of New York with crimes relating to that, and I believe that both brothers were enlisted as co-conspirators in that case.

Baeza was placed in jail on April 23rd, held incommunicado until April 30th, where he was put into the general population.

Three or four days later, apparently an order arrives from the Intendencia, the Government building, directing that they be brought to the Intendencia Building, that is, the two Alvear brothers, Mellafe, Lazo and Choy, Jorge Dabed and Carlos Baeza, all to the Government

building.

The Alvear brothers are released, the five others, including Baeza, are forced to sign papers, are directed to sign papers, it is one paper, signed by all five.

At about 5:00 o'clock, they are handcuffed and brought to Santiago, at this time, to yet a different Police Station, where all five are put in a two-man cell --

THE COURT: How much more have you got?

MR. FISHER: Very little.

THE COURT: All right.

MR. FISHER: They were allowed to sleep until the next day.

On May 6th, in the afternoon, they were taken by military convoy to the stadium, where again they picked up another "expelle," someone who is to be expelled, a man named Poblete, not the Police Officer, but a defendant here in the Eastern District.

Then, to the airport.

At the airport, they are put on a plane which I believe was awaiting their arrival.

Your Honor, I have a copy of the manifest which is difficult to decipher --

Do you have the original?

MR. FRIED: I will concede that on May 4, 1974,

at the Pudahuel International Airport, Santiago, Chile, the defendant Baeza, together with others, whose names I will provide in the expulsion order, were placed upon a plane, I think flight number 988, from Santiago, Chile, to Lima, Peru, and ultimately to John F. Kennedy Airport, where they arrived on flight number 900 on May 5, 1974, from Lima, Peru.

THE COURT: Did the United States pay the passage?

MR. FRIED: The United States paid for passage on both planes, and in fact had made arrangements for those particular accommodations.

THE COURT: Was he then in the custody of a United States Officer on board the Braniff plane?

MR. FRIED: Yes, he was in custody, on a Braniff plane, in custody with, I believe, six, I'm sorry, five other Chilean defendants, and there were six Chilean Police Officers under Agent Charles Cecil, and five other Drug Enforcement Administration Agents, who , incidentally, were in Santiago, Chile, on other business, and were traveling on that aircraft from Santiago, Chile, to Lima, Peru.

THE COURT: All right.

Anything else?

MR. FISHER: We would submit, your Honor, that at this point it is appropriate to consider our request

for the production of certain documentary evidence.

THE COURT: Does the Government deny those allegations?

MR. FRIED: The Government denies all of those allegations, your Honor.

THE COURT: Now, is Mr. Cecil scheduled to leave tonight?

MR. FRIED: He was due to leave tomorrow morning.

SPECIAL AGENT CHARLES CECIL: The first available flight in the morning.

MR. FRIED: The first available flight in the morning.

THE COURT: We will take a five minute recess.

Mr. Cecil will be presented for examination, if you want him.

(At 3:40 P.M. a ten minute recess was taken.)

(continued on next page.)

(After recess.)

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THE CLERK: Be seated, please.

THE COURT: All right, Mr. Fried.

MR. FISHER: Your Honor, in the normal course of events it would be more appropriate to call Mr. Baeza --

THE COURT: No, Mr. Cecil has his obligations in Bogota, Colombia. We are not holding him up. This was fixed for that purpose. The rest of it can go to Thursday.

MR. FISHER: Your Honor, with regard to the questioning of Mr. Cecil, certain of the documents that I would request discover on would be most appropriate, particularly --

THE COURT: All right, Mr. Cecil, will you come forward.

(Witness approaches Clerk's bench.)

THE COURT: Swear Mr. Cecil in.

THE CLERK: Raise your right hand, please.

Witness C H A R L E S C E C I L , called as a witness, having been first duly Sworn by the Clerk of the Court, testified as follows:

THE WITNESS: Drug Enforcement Administration.

MR. FRIED: Your Honor, it might be appropriate for the examination of this witness for me to mark for

the record certain things that have been turned over to Mr. Fisher, and one thing is that I request that this be marked Hearing Exhibit 1, and these are the documents which are the Daily Activity Reports of Santiago of Special Agent Cecil.

THE CLERK: Document consisting of five pages, parked Government's Exhibit 1 in the hearing.

(Document referred to was received and marked Government's Exhibit 1 at the hearing.)

MR. FRIED: A copy of that has been provided to Mr. Fisher. It was given to him this afternoon.

I request there be marked Government's Exhibit number 2, an Expulsion Decree, which has the translation attached, and this has also been provided to Mr. Fisher.

THE CLERK: Document, consisting of three pages, marked Government's Exhibit 2 in the hearing.

(Document referred to was received and marked Government's Exhibit 2 in the hearing.)

MR. FRIED: I would request that Government's Exhibit number 3 be marked. This is a warrant for the arrest of Carlos Baeza, which was issued in this Court on January 11, 1974.

THE CLERK: So marked as Government's Exhibit 3

in the hearing.

(Document referred to was received and marked Government's Exhibit 3 at the hearing.)

MR. FRIED: For the record, without, I think, the need of marking them, I might indicate that I have provided to Mr. Fisher a transcript of Mr. Cecil's testimony before Judge Lee Gagliardi in the Southern District of New York, docket number 74-Criminal-203, dated October 7 and 8, 1974.

The testimony of Mr. Cecil in the Southern District of New York in the case known as United States versus Rafael Lira, docket number 73-CR-751, before the Honorable Charles Stewart.

The testimony of Mr. Cecil in the Southern District of New York in the case of United States against Jorge Dabed Sumar, docket number 74-CR-977, before the Honorable Lee Gagliardi.

And finally, the transcript of this motion that was held before Judge Gagliardi in United States versus Francisco Guinart, 73-CR-1094.

Those documents were provided to Mr. Fisher on March 5, 1975.

THE COURT: Go ahead.

MR. FISHER: Your Honor will not hear me on the

request --

THE COURT: If you are not ready to examine Mr. Cecil, I will excuse him. He came here for this purpose, and he has been here one week for this purpose.

MR. FISHER: As indicated before, your Honor, and for the reasons stated before, I will request a continuance until Thursday in order to examine --

THE COURT: Denied.

MR. FISHER: -- Mr. Cecil.

In view of your ruling, your Honor, I will proceed at this point.

Will I be given an opportunity to state at some time today what documents it is that I would be requesting, your Honor?

THE COURT: Surely. And, of course, you will tell me how they are relevant to the examination, too?

MR. FISHER: Certainly, your Honor.

DIRECT EXAMINATION

BY MR. FISHER:

Q Mr. Cecil, by whom are you employed?

A The Drug Enforcement Administration.

Q For how long?

A Slightly less than six years.

Q Have you ever been stationed overseas?

A Yes, sir.

Q Where?

A Panama, Argentina, Chile, and now Colombia.

Q When were you stationed in Chile?

A From approximately December of 1971 until January of 1975.

Q 1971 through 1975, did you say?

A 1972.

Q Approximately two years and two months, is that right?

A Something like that.

THE COURT: Will I get a copy of the transcript? Is that being ordered?

MR. FISHER: Yes, your Honor.

Q Now, prior to being stationed in Chile, were you stationed in Buenos Aires, Argentina?

A For a very brief period of time.

Q How brief a period of time?

A Approximately six months.

Q Who is the Special Agent in Charge at Buenos Aires at the time that you were there?

A There was none. There was a Regional Director of the Regional Office.

Q Who was the Regional Director?

A Daniel Addario.

Q I am sorry?

A Addario, A-d-d-a-r-i-o.

Q Now, during the period that you were stationed in Buenos Aires, the six months period -- when was the six months period, by the way?

A From approximately March -- Excuse me -- April of 1972 up until November, 1972.

Q Now, when you became stationed in -- So in other words, you went from Buenos Aires, Argentina, directly to Santiago, Chile, is that right?

A Yes, sir.

Q Now, when you arrived in Santiago, Chile, in the course of your official capacity in Drug Enforcement Administration, was the Allende regime still in power?

A Yes, sir.

Q Did there come a time when the Allende regime was overthrown?

A Yes, sir.

Q When was that?

A September 11, 1973.

Q Prior to the overthrow of the Allende regime, would it be fair to state that your relationships as a Drug Enforcement Adminstration Agent with the Chilean Police were

distant?

MR. FRIED: Objection, your Honor.

THE COURT: May I have that question, please, Mr. Simon?

(Record read.)

THE COURT: Sustained as to form.

Q Prior to September, 1972, that is when the Allende regime was overthrown, is that right?

A September of 1973.

Q I am sorry. September of 1973. Prior to September of 1973, while you were in Chile, describe for us your relations as a United States Drug Enforcement Agent with the Police authorities in Chile?

A We exchanged mutual intelligence on the traffickers that were in Chile, the ones that used Chile as a base of operations.

Q And subsequent to -- Prior to September of 1973, did you or your DEA colleagues, and the Chilean Police, ever participate in joint investigations?

MR. FRIED: Objection, your Honor.

THE COURT: May I have the question, please, Mr. Simon?

(Record read.)

THE COURT: I will allow it.

A Yes, sir.

Q And subsequent to September of 1973, did you or your colleagues in DEA participate in joint investigations with the Chilean Police?

A Yes, sir.

Q In fact, one of them concerned Jorge Dabed Sumar, is that correct? Isn't that right?

A Yes, sir.

Q Do you know Mr. Sumar to be someone who was brought to the United States from Chile?

MR. FRIED: I object, your Honor. We concede that Jorge Dabed Sumar was brought to the United States. It is irrelevant to the particular issues in this trial--in this hearing.

THE COURT: Go ahead. It is a hearing. I will allow you to develop it.

Q Now, prior to November 8, 1973, had you ever heard, sir, that Chilean authorities, Police authorities, regularly tortured people who were incarcerated?

MR. FRIED: Objection as to form, your Honor.

THE COURT: May I have that, Mr. Simon?

(Record read.)

THE COURT: Overruled. This is a hearing. I will allow it. I will allow broad and liberal examination,

guesswork, fishing.

MR. FISHER: Well, your Honor, the United Nations has filed a lengthy report on it.

THE COURT: I know. I know all about the UN charter. I know about it.

THE WITNESS: The answer is yes.

THE COURT: Why can't I take judicial notice of it? Why waste time asking the witness?

MR. FISHER: On the UN report?

THE COURT: Yes, surely.

MR. FISHER: I can bring it in to you Thursday.

THE COURT: Well, that would be interesting.

MR. FISHER: I will be happy to offer it.

THE COURT: Yes, surely.

MR. FISHER: It goes to what was going on. Another issue is whether or not this witness knew or had heard it was going on.

THE COURT: But that isn't the real issue. Whether it happened to Mr. Baeza, and whether our Government participated. That's the nub of it. Everything else is just discussion. So I will read everything you submit.

MR. FISHER: Yes and no, your Honor.

THE COURT: All right, yes and no.

Next question, Mr. Fisher.

Q Now, then, were you, prior to November 8, 1973, aware of the existence of a treaty of extradition between the United States Government and the Chilean Government?

A Yes, sir.

Q You were aware, were you not, that that extradition treaty provided for the extradition of those charged with narcotics violations?

MR. FRIED: Your Honor, again I am objecting. If he is treating with the treaty, the treaty should properly be brought in with another witness --

THE COURT: What is the question, Mr. Simon?

(Record read.)

THE COURT: I will allow him to answer that, if you know.

A There was some question about that.

Q There was some question about that in your mind?

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(continued on next page.)

Whether the treaty provided for the extradition of narcotics offenses.

Do you recall what the question was in your mind?

THE COURT: I won't allow it. I will interpret the treaty if it is necessary.

MR. FISHER: Your Honor --

THE COURT: Next question, Mr. Fisher.

MR. FISHER: May I ask --

THE COURT: Next question. These are questions of law. He is not an expert.

MR. FISHER: I understand that your Honor. I also submit that his state of mind as an officerof the Drug Enforcement Administration, and who I believe ordered his arrest, is also relevant --

THE COURT: Objection sustained. Next question. If there is a violation of the treaty then Chile will come in and argue that.

MR. FISHER: Your Honor, that is not the issue --

THE COURT: Next question, Mr. Fisher, or I will sit you down.

Q Now, when for the first time did you see Carlos Baeza?

A It was sometime in July or August of 1973 at the airport.

Q And when for the next time did you see Carlos Baeza?

A November 9, 1973.

Q Now, with regard to the period between October and November, those two months of 1973, you were, were you not, keeping daily activity reports of your work in the Drug Enforcement Administration?

A Yes sir.

Q It was the purpose of those activity reports to indicate generally the area of your work?

A Just to report the number of hours.

Q Just to report the number of hours?

A Yes sir.

Q So that is the only thing that would be reported on your daily activity report, would be the number of hours, is that right?

A Yes sir.

The forms have changed many times and I can't remember what was required during that period, things such as vehicle mileage, things like that.

Q The question, Mr. Cecil, is simply this, all you were supposed to report on your daily activity report was the number of hours, is that right?

A Basically, yes sir.

Q And were you required or supposed to include in your daily activity reports statements as to what you were doing on a given day?

A No sir.

Q I am showing you what has been marked as Government's Exhibit 1 for identifiction in this hearing, the first page of that dated July 2, 1973, and that is a daily activity report, is it not?

A Yes sir.

Q And that report indicates the number of hours you worked on that day, isn't that right?

A Yes.

Q And there is a column headed "Operations", isn't that right?

A Yes.

Q Therein you state that you interviewed Munoz. Prepared cable re same. Contact with SAIC Special in charge and Bachrach re current investigations.

Bachrach, by the way, was the regional director stationed in Buenos Aires at the time, isn't that right?

A AS of two days.

Q But at that point in time he was the regional director of Buenos Aires? Right?

A Yes.

Q "Conferred with Baro via telephone."

Who is Baro by the way?

A The Buenos Aires regional office.

Q "Conferred with Detective Vasquez."

Who is Detective Vasquez?

MR. FRIED: Objection. This is all activity that took place in July 1973 and has no relevancy to -the issue before this Court.

MR. FISHER: Your Honor, the point is this, the document on which I am presently questioning is the same form as the documents -- as the daily activity report --

THE COURT: Objection overruled. Go ahead.

Q Who is Vasquez?

A He is the Interpol representative for the Chilean police.

Q When you conferred with Vasquez, by the way, would you regard that as your enforcement and liaison work?

A Yes sir.

Q And then "hotel" and then there are some other numbers there, right, and then you indicate one hour for lunch, all under the column "Operations". Correct?

A Yes.

Q So that you are required to place in your report the subject of your activities, is that right?

A On July 2, 1973 I was.

Q That changed?

A Yes.

Q When?

A I believe it was September of 1973, possibly August.

Q Well, on August 3, 1973, you were still listing your --

A I don't recall when it was exactly, but the requirement was changed.

Q But the form remained the same, is that right?

A Yes.

Q And the form still had a column "Operations", is that right?

A Yes.

Q Under "Operations" on 11/8/73, November 8, 1973, you write "One hour off for lunch," is that right?

A Yes sir.

Q That was required for lunch -- the time you spend off for lunch was required but what you did was not required as of the November 1973, is that right Mr. Cecil?

A It was just an easier way of reporting the

number of hours I worked that day.

THE COURT: Was this for payroll purposes?

THE WITNESS: For time and attendance payroll.

Q Now, you told us you saw Mr. Baeza on November 9, 1973, is that right?

A Yes sir.

Q Where?

A At the Drug Squad offices at the Chilean Police Headquarters in Santiago.

Q Then on McKeon Street?

A Yes sir.

Q Do you know if Julio Rada has an office in that building?

A Yes, he does.

Q Who is Julio Rada?

A He is the chief of police for the area of Santiago.

Q YOu know him?

A Yes, I know him personally.

Q When was the first time you met him?

A Sometime in 1972. I can't remember exactly.

Q Now, how often would you say you met Mr. Rada?

MR. FRIED: Objection, your Honor.

THE COURT: Overruled. The relationship between Government officers and the local police is

GA 2A

relevant because the claim is that they worked hand-in-hand, and the local Police are just the cat's paw for the United States Government. So I will allow it.

A It would depend. I would see him or talk with him on the telephone on the average of at least once or twice a week, and sometimes more frequently.

Q Do you know a man named Valenzuela, connected with the Chilean Police?

A Several.

Q Inspector Valenzuela, would that help?

A Yes.

Q When for the first time did you meet him?

A It was either in late 1972, or early 1973.

Q In any event, youmet him prior to November 8, 1973?

A Yes.

Q Do you know a police Agent named Poblete, P-o-b-l-e-t-t-e, is that right, Mr. Cecil?

A I think it has only one "t".

Q I am sorry. Mr. Poblete, what was his official title?

A He was Chief of the Narcotics Squad.

Q And this was in 1972?

A Yes.

Q And in 1973, Poblete was Chief of the Narcotics Squad?

A No, sir, in -- after September of 1973.

Q From September of 1973, through and including June of 1974, was Poblete Chief of the Narcotics Squad?

A Yes, sir, he was.

Q How often did you meet with him in that period?

A It would be difficult to say, because I didn't talk with him very much about that.

Q Were you present when Mr. Franquille conferred with him, either in person or telephonically?

A On occasions, yes.

Q George Franguille is the Special Agent in Charge nineteen seventy -- Withdrawn.

Who is George Franguille?

A Special Agent in Charge of the Santiago District Office.

Q And when did he become Special Agent in Charge of that office?

A In May of 1973.

Q And he remained Special Agent in Charge through June of 1974?

A Yes, sir.

Q Now, in November of 1973, did you personally see

any other Drug Enforcement Administration Agents in Santiago, Chile?

A Yes, Mr. Franguille.

Q Other than he?

A As far as I can remember, there were no others, yes.

(continued on next page.)

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Q Now, on November 9, 1973, you saw Mr. Carlos Baeza at the Investigations Building?

A Yes, sir.

Q Is that known as La Pesca, something like that?

A I never heard it called that. It is possible.

Q Okay.

What happened when you saw Mr. Baeza? Where was Mr. Baeza when you saw him?

A He was in the reception area of the Drug Squad.

Q Would that have been Poblete's office at that time?

A No.

Q Or Poblete's reception room?

A It could be construed as a reception room for Poblete's office.

Q Now, who else was present when you saw Baeza on November 9, 1973?

A There were a group of Chilean Detectives, but I couldn't recall exactly which ones they were.

Q Do you remember whether Inspector Valenzuela was one of that group?

A No, I don't. It's possible.

Q It is possible, but you don't know. About how many Chilean Detectives were there?

A Five or six.

Q And who else was present besides Baeza and five or six others and yourself?

A There was Juan Jose Osorio, two Colombian women--

Q What time did you get there?

A I don't recall. It was approximately about 10:00 o'clock in the morning some time.

Q And was there an Enrique Munoz there? Does that refresh your recollection, sir?

A I don't think he was there at that time. It is possible. I don't remember seeing him.

Q And do you remember whether or not there were other people in the room, people other than the Police?

A Other than the persons that I mentioned, I don't recall seeing anyone else.

Q One way or the other, or your best recollection is there was no one else there?

A That is my best recollection.

Q That there was no one else there?

A Other than the Police Officers and the individuals that I mentioned.

Q Now, when you saw Baeza, was he handcuffed?

A Yes, sir.

Q To a chair?

A No, sir.

Q Describe for us how he was handcuffed?

A He was standing up facing the wall, with his hands behind his back, cuffed behind his back.

Q And did you confer with anyone at that time, any of the Chilean Police?

A Yes, sir.

Q With whom?

A Inspector Manuel Lopez.

Q This was not your first visit to the Investigations Building, was it?

A No, sir.

THE COURT: Do you speak Spanish yourself?

THE WITNESS: Yes, sir, slightly.

Q Slightly, Mr. Cecil?

A I do not speak it fluently. I can make myself understood, or understand it.

Q You have been continuously stationed in South America since 1972, is that right?

A Yes, sir.

Q Over three years, and you speak Spanish slightly, is that what you are telling us?

A It is not perfect Spanish, no, sir.

Q It is not slight, either, is it?

THE COURT: Well, we are quibbling.

MR. FISHER: We sure are, your Honor.

THE COURT: To make yourself understood?

THE WITNESS: Yes, sir.

THE COURT: With the storekeeper, for example?

THE WITNESS: Generally, yes, sir.

THE COURT: Do you read a Spanish newspaper?

THE WITNESS: Yes, sir.

Q In 1973, in November of 1973, could you have translated the following into Spanish:

". . . Where is the plant . . ."?

A Yes.

Q And could you have said in Spanish in 1973, in November of 1973, " . . . Who was the guy you brought to the airport . . ."?

A Yes.

Q Could you have asked the question:

". . . How many automobiles do you own. . ." in 1973?

A Yes, sir.

Q Were you in Curico shortly prior to your visit to the Investigations Building on November 9th?

A No, sir.

Q Have you ever been to Curico?

A Yes, sir.

Q Were you in Curico in November, 1973?

A Not that I recall. But again, it is possible. It is not far from Santiago.

THE COURT: Where is Curico?

THE WITNESS: It is a suburb of Santiago.

Q Now, then, you spoke with Inspector Lopez, is that right?

A Yes, sir.

Q Inspector Lopez told you that Baeza had been arrested, is that right?

A Yes.

Q The night before, or the day before?

A Right.

Q That was the first time you learned Baeza had been arrested, is that right?

A I don't recall whether I was called the night before, and went over the first thing in the morning, or I was called in the morning and went directly over there, one of the two.

Q You were surprized to here that, weren't you, that Baeza had been arrested?

A Yes, I was.

Q You had no idea that was going to happen, did you?

A No, sir.

Q None at all. Did you discuss with Franguille prior to November 8, 1973, a request to the Chilean Government to have Mr. Baeza arrested?

A No, sir.

Q Never?

A (There was no response.)

THE COURT: Please answer vocally, so it can get on the record.

Q Did you ever see a document in your office in the -- your office, by the way, is in the American Embassy?

A Yes, sir.

Q Did you ever see a document requesting the arrest of Mr. Baeza prior to November 8, 1973?

A No, sir.

Q Had you ever discussed with any Chilean Law Enforcement Agent Carlos Baeza?

A Yes, sir.

Q Now, at this point --

MR. FRIED: Objection. I am not clear as to the point in time. Are you referring to before November 8, 1973?

MR. FISHER: Before November 8, 1973?

THE WITNESS: Yes, sir.

Q Now, November 8, 1973, you and Mr. Franguille were involved in the Baeza investigation, isn't that right?

A Yes, sir.

Q You had been in contact with the Chilean authorities in regard to that investigation, were you not?

A On a very limited basis.

Q In fact, you had been in touch with the Canadian Embassy, isn't that right?

A Yes, sir.

Q And in fact, from time to time, airport tickets would have to be arranged for Mr. Munoz to travel, isn't that right?

A Yes, sir.

Q And they knew that you were investigating Mr. Baeza, isn't that right, the Chilean authorities --

THE COURT: You are talking about Munoz. Munoz is a Special Agent. Right?

MR. FISHER: No, no, your Honor, there are two Munoz's. One is Enrique, a defendant-type person, and the other is Carlos Munez, the Government witness. He testified before your Honor.

THE COURT: What is the name of the Spanish-speaking --

MR. FRIED: I think you are confusing it with

Hector Santiago.

THE COURT: I am sorry.

MR. FISHER: Was he down there, Mr. Fried?

THE COURT: You might as well ask him. You will come to it, anyway.

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Q Did you ever see Hector Santiago in Santiago, Chile, sir?

A No, sir.

Q And so the Chilean authorities knew you were investigating Baeza, is that right?

A Right.

Q Prior to November 8, 1973?

A They knew we had an interest in him, but they didn't know the extent of any investigation.

Q You are a Drug Enforcement Administration Agent, is that right?

A Yes.

Q If you are making an inquiry about Baeza, it is reasonable to assume it is about a narcotics violation, is that right?

A Yes.

Q They knew you were investigating him in connection with narcotic connections?

A It would be logical to assume that, yes.

Q You know that they knew, right?

A (No response.)

Q You knew that the Chilean authorities knew of your interest in Baeza?

MR. FRIED: I object.

It is argumentative.

THE COURT: Sustained.

MR. FISHER: Withdrawn.

THE COURT: He said he made an inquiry about Baeza.

Q You also were aware of the continuing investigation by your Government, the United States Government, at that point in time, November of 1973?

A Yes.

Q In fact, there was a Carlos Munez traveling to Canada allegedly as Mr. Baeza's courier, isn't that right?

A Yes.

Q And at that point in time you knew that Mr. Munez, Carlos Munez, was supposed to eventually return to South America with money, is that right?

A Yes.

Q That was supposed to go to Mr. Baeza?

A Yes.

Q Naturally, you wanted to make sure the deal went down, in the vernacular, to get the proof, isn't that right?

A Yes.

Q That's the whole reason surrounding Munez going to North America?

A Yes.

Q Also to see where Mr. Munez might lead to New York buyers, isn't that right?

A Yes, sir.

Q Didn't you tell anybody in the Chilean Government, any of your colleagues in Chilean law enforcement to let Mr. Baeza alone?

A No.

Q Did Mr. Franguille?

A No.

Q When you went to see Mr. Baeza in the Investigations Building, did you tell me Lopez in words or substance, or any other Law Enforcement administrator of the Chilean Government: We've got a thing going with Mr. Baeza. Get him out as soon as possible?

A No, sir.

Q Did you tell them to keep him in?

A No.

Q Did you suggest what questions might be asked of Mr. Baeza to Mr. Lopez?

A No.

Q Or any other Chilean Law Enforcement Agent?

A No.

Q That never happened, right?

A No.

Q At that point in time, you had been advised there was some difficulty in Canada regarding Munez's delivery of the suitcase --

A Yes.

Q In fact, Mr. Munez, Carlos Munez, had been unable to affect the connection, isn't that right?

A If I remember, he was waiting to be contacted, and the contact never came.

Q This is about the time that Mr. Baeza, Mr. Orsorio, and Mr. Enrique Munez are all locked up, to your knowledge?

A Yes.

Q Did it occur to you --

THE COURT: Answer vocally.

A Yes.

Q Didn't it occur to you that maybe one of the reasons that Mr. Munez had not been contacted was because the main suspects in your investigation were presently being held by the Chilean Police?

A Yes.

Q Did you communicate that fact to your colleagues in North America?

A Yes. I think I did.

Q By teletype?

A Yes.

Q Is that teletype in existence today?

A (No response.)

Q To your knowledge?

A If I sent one, it would exist.

Q Now, how many teletypes did you send from your headquarters in -- This is through the American Embassy, an American Embassy teletype?

A Yes.

Q How many such teletypes did you send with regard to the Chilean incarceration of Baeza, Orsorio, Enrique Munez, to your colleagues in North America?

A There were at least two, and possibly three. Possibly more.

MR. FISHER: I call for the production of those documents.

MR. FRIED: I don't have those documents. The witness is here to testify what he did and what he said, and that is sufficient to the hearing of this nature.

THE COURT: Try to get them.

MR. FRIED: Excuse me?

THE COURT: Try to get them.

Do you know whether they are in existence?

MR. FRIED: There was one that I saw.

THE COURT: Did you retain them?

MR. FRIED: I don't --

THE COURT: Does the Agency?

MR. FRIED: Teletypes are retained by the Agency in Washington, D.C.

THE COURT: For how long?

MR. FRIED: I don't know.

THE COURT: Check it out and see if you can locate it.

Q You knew, by the way, of the existence of the Royal Canadian Mounted Police in Canada in connection with this investigation?

A Yes.

Q And even the French authorities, I believe it was?

A I wasn't aware of the French.

Q You knew Mr. Munez wasn't traveling directly to Canada?

A Yes.

Q You knew he was going to Europe first?

A Yes.

Q And then from Europe to Canada?

A Yes.

Q And from Canada, maybe to the United States?

A Yes.

Q You knew that Agents were contacted all along the trail to be waiting for Mr. Munez arrival?

A Yes.

Q Elaborate preparations were made?

A Yes.

Q Now, Mr. Baeza is there before your eyes on November 8, locked up?

A Yes.

Q With his co-conspirators, allegedly, Osorio and Enrique Munez?

A Yes.

Q What, sir, did you do in order to further along this giant narcotics investigation enterprise that you had assisted in?

A Nothing.

Q Nothing?

A Nothing.

Q Referring to the last sheet of Government's Exhibit 1 for identification for this hearing, under manpower utilization, part four, there is a column that says, "CL-1"?

A Yes.

Q What does CL-1 stand for?

A Class 1.

Q What is Class 1?

A That is a classification drug investigation used for internal purposes.

Q What was number 5?

A Number of hours spent.

Q And Class 1 investigation would be what, a significant investigation?

A Yes.

Q "C" to the left would stand for cocaine?

A Yes.

Q Drug Area 2?

A South America.

Q How many hours did you spend on November 9, 1973, in the Investigations Building?

A Maybe forty-five minutes.

Q Forty-five minutes?

A Yes.

Q What did you do after you left?

A Went to my office.

Q Did you confer with any Chilean authorities after your departure from the Investigations Building on that day?

A It is very possible, but I don't recall.

THE COURT: When you met Mr. Baeza, at the Police Station, did you ask to have an interview with him?

THE WITNESS: No, sir.

THE COURT: Did you talk to him at all?

THE WITNESS: No, sir.

THE COURT: You just saw him and --

THE WITNESS: Saw him and passed. He was in an outer office, and I went in the inner office.

Q For how long a period of time did you see Mr. Baeza in the Investigations Building?

A It was considerably less than ten seconds.

Q Considerably less than ten seconds?

A Yes.

Q What was the first -- You see Mr. Baeza the first thing you did on November 9, 1973 at the Investigations Building?

A Yes.

Q You went on duty that day at 9:00 o'clock?

A Yes.

Q Which was normal for you?

A Yes.

Q Between 9:00 o'clock and 10:00 o'clock, did you do anything in connection with the Baeza investigation?

A The first thing I did that morning, I remember it well, was to go to Investigation Headquarters. I was there about forty-five minutes to an hour.

Q The first thing you did with regard to the Baeza investigation was to go to the Investigations Building that day. You did nothing between 9:00 and 10:00 in connection with the Baeza case, right?

A Evidentally I went there at 9:00 instead of 10:00.

THE COURT: Are you familiar with the facilities in that prison?

THE WITNESS: It is not a prison, your Honor. It is somewhat -- It would be similar to a Police Headquarters.

THE COURT: Do they have interrogation rooms?

THE WITNESS: I have never seen any.

THE COURT: You've never been through the facilities?

THE WITNESS: I have been to the Drug Squad offices, Chief of Police for the areas office, and to the Director General's office.

THE COURT: Have you ever seen instruments of torture, electrodes?

THE WITNESS: No.

THE COURT: Tables with straps that could restrain a prisoner?

THE WITNESS: No, sir.

THE COURT: Have you ever been to any subterranean passageways of any prison facilities?

THE WITNESS: The building, as I recall it, has three floors. The bottom floor is half above and half below the ground. The Drug Squad office is located on the bottom floor.

THE COURT: Have you ever been there?

THE WITNESS: Yes.

THE COURT: Have you been through the entire -- What do you call it -- first floor, or the basement floor that you described?

THE WITNESS: No, sir, I haven't.

THE COURT: Do they have interrogation rooms there?

THE WITNESS: I assume so, but I have never seen any.

THE COURT: You've never gone into any?

THE WITNESS: No.

MR. FISHER: May I inquire?

THE COURT: Sure.

Q Now, you are saying you must have gotten there at 9:00 o'clock in the morning, right?

A Yes.

Q The first thing you do, for significantly less

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than ten seconds, you see Mr. Baeza?

A As long as it takes to walk from here to the wall (indicating).

Q It must have been a phone call the night before alerting you to the fact that Mr. Baeza was arrested?

A It could have been the night before, or that morning at home.

Q You would have been called at home by the Chilean authorities?

A Yes.

Q Whether it was the night before or the morning when you got a phone call at home about Baeza's arrest, who is it that called you?

A I believe it was Inspector Lopez.

2 fls (continued on next page.)

Q What did he tell you?

A He just said that Baeza and Osorio, and three Columbians, I believe, were detained.

Q Did he say why he was calling you?

A Just advising me of it.

Q Was Mr. Lopez in the habit of advising you of every narcotics arrest he made?

A I assume he was aware that I had made an inquiry about Baeza.

Q When had you made an inquiry about Baeza?

A Sometime in September or October.

Q Isn't it a fact, when Mr. Carlos Munes came to the United States Government to cooperate, he specifically said "I don't trust the Chilean police"?

A Yes sir.

Q Isn't it a fact you and Franguille did everything you could to keep the Chilean police out of that investigation?

MR. FRIED: Objection.

THE COURT: Sustained as to form.

Q Isn't it a fact that you knew that Munes first went to the Canadian Embassy with regard to his story about a conversation with Osorio and Baeza, isn't that right?

A Yes.

Q The Canadian people brought him over to your embassy?

A Yes.

Q You met with Mr. Munoz?

A Yes.

Q He told you he didn't trust the Chilean police?

A Yes.

Q They were corrupt?

A Yes sir.

Q He was afraid if the Chilean police knew his involvement in the investigation that that information would be sold to the defendants?

MR. FRIED: Objection.

THE COURT: Overruled.

A Yes sir.

Q So that the truth is you never told any Chilean police officer about your investigation of Baeza, isn't that correct?

A Yes sir, I did.

Q What did you do after this fleeting glimpse of Mr. Baeza at 9:00 of the morning of November 9, 1973, sir?

A I got personal data as far as name, physical discreption, place, date of birth of all all the defendants arrested including any travel documents they had on them.

And Inspector Lopez did tell me of a statement that Osorio made.

Q Osorio made a statement prior to your arrival, is that right?

A Yes.

Q What was the content of that statement?

MR. FRIED: Objection. It is not relevant to this hearing.

Again, we are far afield.

THE COURT: I will allow it.

MR. FRIED: A statement --

THE COURT: I agree, but I will allow it.

A Orsorio's statement was something to do with the involvement of an individual in Buenos Aires in his narcotics deals.

Q Did you make a written memorandum with regard to what you were told about Osorio's statement?

A Yes.

Q Was that in your file?

A Should be, yes.

MR. FISHER: I call for the production of that.

THE COURT: What is the relevance? For what purpose?

MR. FISHER: Osorio, Baeza and Munoz, Enrique

Munoz --

THE COURT: Only if you have it in your file, Mr. Fried. I rule it not relevant.

Go ahead, Mr. Fried. This is not a hunt through all the Government's files to attempt to find information or get evidence for a new trial.

That is not the purpose of this hearing.

MR. FRIED: I would like to argue that. Even if it is in our file, the statement was never used at trial.

THE COURT: Show it to me.

MR. FRIED: It may be upstairs or returned.

THE COURT: We're going to put a stop to this type of nonsense where lawyers come in after the trial for one purpose and hope to get something that might help -- some evidence that might be the ground for a new trial. That is the only purpose.

MR. FISHER: My information is that Osorio was tortured and that statement was the product of the torture and that's why Osorio was not available to me as a witness.

THE COURT: Is that the one you took a video tape of?

MR. FISHER: Yes.

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THE COURT: He looked capable to me.

MR. FISHER: It wasn't because he was incapable of speaking --

THE COURT: Let's keep the theatrics out of it. I will try to believe as much as I can about it.

MR. FISHER: I appreciate that.

THE COURT: I will do the best I can. Go ahead Mr. Fisher.

I expect you to come up with some corroborative proof instead of statements by the defendant.

MR. FISHER: Testimony, your Honor.

THE COURT: Testimony by the defendant. I will judge the testimony when it is offered.

MR. FISHER: Thank you, your Honor.

Q Mr. Cecil, did you ask Mr. Lopez whether any of the defendants had made statements?

A Yes sir.

Q Did you ask Mr. Lopez how long the defendant had been interrogated?

A No.

Q Did you ask him how long he had been arrested?

A Yes.

Q What were you told?

A The time of the arrest was -- I was told by Mr.

Lopez -- was reported in a communication.

THE COURT: When did you intend to make your plane tomorrow morning? This could go on for a long time.

THE WITNESS: I would like to catch the first shuttle I can for Washington.

THE COURT: When is that?

THE WITNESS: Seven.

THE COURT: How much longer have you got, Mr. Fisher?

MR. FISHER: I will try to be finished by 5:00.

THE COURT: And you will have a few questions?

MR. FRIED: Yes, for clarification.

THE COURT: Go ahead.

Q You asked Mr. Lopez if any of the arrested people had made statements, is that right?

A Yes.

Q This is after having recognized Baeza as the subject of your investigation, you knew what he looked like?

A Sure.

Q What did Mr. Lopez tell you with regard to Baeza?

A He said the only person who made a statement was Osorio.

THE COURT: Incidentally, did you see any of the other people that were in custody, Osorio, or --

THE WITNESS: Yes sir, I saw Osorio and the two women, two Columbian women, and possibly Munoz.

THE COURT: Did you see marks on any of them that evidence any physical assault?

THE WITNESS: No sir.

THE COURT: How close were you from them?

THE WITNESS: I would say 15 feet.

THE COURT: Did any of them complain to you that they were beaten?

THE WITNESS: No. I didn't have time to talk to them, I wasn't in their presence that long.

THE COURT: Did you know any of the others?

THE WITNESS: I knew Osorio.

Q Did you know Enrique Munoz when you saw him?

A No.

THE COURT: You don't know whether they knew that you were an American Agent, do you?

THE WITNESS: No, I would have no reason to know.

Q It would be fair to say that you don't look like the normal Chilean? Wouldn't that be fair to say?

A No, there are a lot of blond blue-eyed Chileans.

Q Yes? I didn't see any.

After this conversation where Inspector Lopez -- that occurred before or after you saw Baeza?

A After.

Q How long after?

A 15 or 20 minutes, maybe less.

Q What happened between the fleeting glimpse of Baeza and company, and that 15 or 20 minute period of time after you learned about Osorio's statement?

A I was just looking at -- for example, a passport in order to get the personal details regarding --

Q These of course had been documents seized by the Chilean Police?

A Yes.

Q They gave them merely upon your verbal request?

A Yes.

Q You had no document demanding them or requesting them?

A No sir, I did not.

Q What did you do after Mr. Lopez told you about the statement from Osorio?

A I made notes of it and I reported it in the

A 97

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report I mentioned earlier.

Q Then what?

THE INTERPRETER: Would you raise your voice, please?

THE WITNESS: Yes, I will try.

Q Then what?

A Took a considerable amount of time to -- I reviewed some of the personal papers that were seized in addition to passports and checked telephone numbers.

Q What personal papers were seized?

A I remember there had been a -- like a telephone book, several of them seized from the defendants and I took notes on what was contained.

Q Telephone address books?

A Right.

Q Not directory, personal telephone books?

A Yes.

Q Seized from the defendants by the Chilean police?

A Yes.

Q What information did you copy out of that, sir?

A Names and addresses, and telephone numbers.

Q Do you have a copy enbodying the information you were able to glean from those items that had been seized

sir?

A No.

Q Do you recall what it was?

A No. I was particularly interested in the address and telephone number of another subject. I didn't find that.

MR. FISHER: Your Honor, I am aware of your ruling before. I would like to inquire whether or not he recalls seeing Obando, Osorio or Vargas Bega, if I may --

THE COURT: Any objection?

MR. FRIED: Yes.

THE COURT: Objection sustained.

MR. FISHER: I had a feeling you would say that. I would like to reserve whatever rights we have, your Honor, to make a subsequent application based upon his testimony.

Q Other than the --

THE COURT: You are talking about a motion for a new trial?

MR. FISHER: Yes, your Honor.

THE COURT: That is the purpose for the hearing.

MR. FISHER: No, it is not.

Q Other than the telephone address book --

THE COURT: Do you know in almost every conviction I had in this court I had a motion for a new trial based on some kind of evidence?

MR. FISHER: I have never made one.

THE COURT: I haven't granted one yet but I have to go through the transcript and through the testimony.

MR. FISHER: I never made one for your Honor.

THE COURT: Here is one coming.

MR. FISHER: The first.

THE COURT: Go ahead.

(Cont'd on next page.)

Q Other than the telephone books and the passports, were you shown anything else by the Chilean authorities on the morning of November 9th?

MR. FRIED: Your Honor, there is no testimony of a passport.

THE COURT: What is the question?

(Whereupon, the last question was read by the Reporter.)

MR. FISHER: The objection is as to passports?

THE COURT: Go ahead.

Q I thought you testified they showed you the passports.

A Yes.

Q They showed you telephone address books?

A One or two.

Q Other than that, what else did they show you?

A Some personal documentation for one of the Colombian female subjects.

Q Anything else besides that?

A As far as I remember, no.

Q Did they tell you about the search of the Baeza home on the preceding day?

MR. FRIED: Your Honor, the same objection.

THE COURT: Overruled. We'll go back to Toscanino

and try to prove an unlawful search and seizure under the Fourth Amendment of Mr. Baeza in Chile of a Chilean.

Let him try again.

A I asked him if he had seized any narcotics, and they said no.

Q They told you that had searched the house, is that right?

A I don't recall whether they told me that or not.

Q You asked whether or not they had found any narcotics?

A Yes, sir.

Q So now you've been at the Investigations Building for about twenty minutes on the morning of November 9th. Now it is about 9:20 in the morning, right?

A Yes.

Q Now, you've been told about the documents that had been found in the search of the Baeza home, and the Osorio statement, is that correct?

A Yes.

Q What happened after that, sir?

A (No response.)

Q What happened after that?

A I took the information that I received from the Chilean authorities and went to my office.

Q It's about a ten minute walk between your office and the Investigations Building, isn't that right?

A Right.

Q So you are back in the Investigations Building about 9:30 in the morning -- I'm sorry, in your office, in the American Embassy, about 9:30 in the morning?

A A little later than that.

Q What else, if anything, did you do in connection with the Baeza case on November 9, 1973?

A I prepared a report based upon the information that I received at the Investigations Headquarters.

Q That is the report to which you already referred, is that right?

A Yes.

Q That was it?

A I am sure that there had been phone calls back and forth with Canada, and I discussed it on the telephone, but nothing else was done as far as I recall in Santiago.

Q Didn't you tell us before, notwithstanding the fact that this grand investigation had been interrupted, you did nothing?

A There wasn't much I could do.

Q You conferred with Canada?

A I may have.

Q You don't recall that you did?

A No.

Q Do you recall conferring with Mr. Bachrach in Buenos Aires?

A No. Again, I may have.

Q Did you confer again with the Chilean authorities in connection with -- Did you confer again with the Chilean Police authorities on that day?

A I think I did, by telephone.

Q With regard to what?

A Asking if they were going to be charged or not, how long they were going to be locked up.

Q What were you told?

A They were being held for the Magistrate.

Q Which meant what?

A That they were being held for a judicial proceeding.

Q You've been in Chile for a while already, how much time did that mean? Wasn't that something you wanted to know, how long these guys were going to be locked up?

A Could be up to five days.

Q Could be less?

A Could be less.

Q Could be more than five days if the Magistrate

decided to hold them, right?

A Yes.

Q Between November 9, 1973, and November 18, 1973, did you or any United States Agent in your presence communicate with any Chilean official with regard to the release of Munez, Baeza, and Osorio?

A I remember either on the telephone or in an appropriate opportunity in person asking whether they were still under arrest or not. And I was told yes.

THE COURT: Did you ask that they be released?

THE WITNESS: No, sir; I did not.

Q You were just making inquiries, is that right?

A Yes.

Q What are you doing with regard to your colleagues in Canada at this point?

MR. FRIED: Objection.

THE COURT: Objection sustained.

Q Are you communicating with your colleagues in Canada with regard to --

MR. FRIED: Same objection.

MR. FISHER: Wait for me to complete the question.

MR. FRIED: The purpose of the hearing is --

MR. FISHER: May I finish the question first?

MR. FRIED: What happened in South America is the

subject --

THE COURT: Finish the question.

Q Were you communicating with your colleagues in North America with regard to the information you were learning from the Chilean Police with regard to the detention of Baeza, Osorio, and Munez?

MR. FRIED: I object.

THE COURT: Objection sustained.

Q Did you communicate in writing or by teletype?

MR. FRIED: Objection.

THE COURT: Objection sustained.

MR. FISHER: I am trying to -- May I make a statement?

THE COURT: Yes.

MR. FISHER: I am trying to establish if there are documents which would indicate what was going on vis-a-vis the American and Chilean authorities with regard to their apprehension. I submit I am not bound by this witness' testimony. If I can establish there are documents, I might be entitled to them.

THE COURT: I say this is just a search for evidence in a hope that might produce something upon which a motion for a new trial will be based. That is not the purpose of the hearing.

The charge here is that Mr. Baeza was tortured, spirited away, wrenched from his home by Americans, American Agents, or by Chilean Police, with the aid and financing of Americans. Whether they reported to anybody is quite immaterial.

MR. FISHER: If he was in fact reporting --

THE COURT: Did you ever report any tortures, any financing of the arrest of Mr. Baeza by the American Government?

THE WITNESS: No, sir.

THE COURT: All right.

Q Did you ever report a specific release date of Munez, Osorio, or Baeza to the people --

THE COURT: Objection sustained.

MR. FISHER: If he in fact reported such a date, then he was given such a date, a specific date, and he did it before he saw the Judge --

THE COURT: That does not indicate torture or financing --

MR. FISHER: That is just one aspect.

THE COURT: Really? Any cooperation that our Government gives to the Chilean Government, any information we get from the Chilean Government, is not torture, is not the subject of this hearing at all, and I won't

allow it.

MR. FISHER: If in fact the relationship between the two is such that the Chileans in fact were Agents as amanuensis for the United States Government, then I submit that we are entitled to the relief sought.

THE COURT: I allowed you to develop the relationship between this witness and the Chilean Police. You are asking for something else. Objection sustained. You have an exception. Next question. This is not a field day.

Q Were you ever told by an official of the Chilean Government that either one of the three defendants who were then arrested, Munez, Osorio, or Baeza, would be released on a specific date?

A No, sir.

Q No?

A No.

Q So then you spent a total ultimately of about twenty-five minutes in investigation on the Baeza case, and maybe about another twenty minutes on the phone for the rest of the day, isn't that right?

A Something like that. Could have been as long as an hour and a half.

Q Could it have been as long as five hours, sir?

A No.

Q The number 5 on the last page of Government's Exhibit 1 for identification under CL-1 -- That was a Class 1 investigation?

A Yes.

Q Baeza was a Class 1 investigation?

A Yes.

Q There were other Class 1 investigations pending at that time?

A Yes.

Q Which?

MR. FRIED: Objection, your Honor.

THE COURT: Objection sustained.

Q How many telephone calls did you make to representatives or officials of the Chilean Government on November 9, 1973?

A (No response.)

Q Just how many?

MR. FRIED: Objection to the form of the question unless the calls are relevant --

THE COURT: I will allow it. If you know.

Q How many did you make?

THE COURT: I don't want a guess or approximation.

THE WITNESS: I don't recall.

Q Certainly it couldn't have been more than a total of a half hour --

MR. FRIED: Objection.

THE COURT: Overruled.

Q It certainly couldn't have been more than a half hour's worth, could it?

A I have no way of telling.

Q Would it be more than an hour?

A No.

Q Now, Mr. Cecil, you had no other person-to-person visits or contacts with Chilean representatives, right, on the 9th?

THE COURT: The answer is?

THE WITNESS: No.

(continued on next page.)

CROSS-EXAMINATION BY

MR. FISHER (Cont'd):

Q Now, referring to the last page of Government's Exhibit 1, you have the number "3" written under the column, Law Enforcement Liaison.

Is that right?

A I think that is probably under "J" instead of "K".

Q Strategic Intelligence?

A Yes, sir.

Q Referring to Drug Area on the last page of that exhibit, sir --

A Yes.

Q What is the number, that's No. 2, is that right, that's between lines; is that right?

A That belongs on the line above.

Q It belongs on the line above?

A Yes, sir.

Q In other words, we have got Drug Area 2, nothing along that column; then -- and then we have in the column below it, C, 5 and 5. Is that what you are telling us?

A Yes.

Q As to the fifth, the last column, in the total column, belongs on the second line; is that right?

The "5" is straddling a line but actually belongs beneath the line; is that right?

MR. FRIED: I object.

THE COURT: I will allow it.

A All of these figures should be on the same line.

Q Which one, the top or the bottom?

A The top line.

Q All of them?

A Right.

Q But C and 5 are clearly in the line beneath, there is no doubt about that, there is no straddling there?

A That's right.

Q Then you had spent some time that day in law enforcement liaison work?

A It appears to me that it is reported as strategic intelligence.

Q I understand that but you were over in investigations at 9:00 o'clock in the morning; yes?

A That is not reported as law enforcement liaison.

Q That would be strategic intelligence?

A No, sir.

Q What is strategic intelligence generally?

MR. FRIED: I object.

THE COURT: I will allow it.

3

A The debriefing of informants.

Q Are you telling us that without telling us how on December 9, 1973, you debriefed an informant; is that right?

A Yes.

Q For three hours?

A Right.

Q Were you at investigations again between the period, the investigations building again between November 9th and November 13th?

A I don't recall. It's very possible that I was.

Q Did you see Baeza again?

A No.

Q Other than these one or two general inquiries as to when they would be released, did you have any other conversations with Chilean authorities regarding the detention of Baeza, Osorio and Munoz?

A As far as I recall, no.

Q When is the next time you saw Baeza?

A On May the 4th, 1974.

Q Prior to your testimony here, did you review any notes or memorandum or any other form of document within the last couple of days?

A I reviewed several affidavits that were filed in the case.

Q Several affidavits?

A Yes.

Q And affidavit of Bernard Fried?

A Yes.

Q Requesting a 90-day continuance?

A Yes.

Q Any others?

A One that an associate of yours filed.

Q Mr. Scriber?

A Yes.

Q Regarding the continuance of the defendant Vaeza?

A Right.

Q Other than those two affidavits, did you review other affidavits in connection with your testimony here today?

A I think we looked over these things, these details in Mr. Fried's office this morning and that was about it.

Q Now, the details throughout the period of early November are still available, isn't that right, as far as you know?

A They may be. It's possible that they are not.

Q You were filing dailies to the extent that you were filing, and you were filing dailies within the period of November 8th through November 18th; isn't that right --

MR. FRIED: It may save time. These are the dailies and all the dailies that are in existence now.

We have checked with the DEA Santiago office in connection with the trial held here last summer and these are the dailies that were received.

MR. FISHER: That was because we made a specific request during the trial. We didn't ask for all of them, we might have but the Court didn't allow them.

MR. FRIED: It's my understanding these are the dailies. There was a change-over of form at the time.

Is that correct, Mr. Cecil?

THE WITNESS: There is a possibility that some copies of my reports, daily activity reports, could be in existence if they weren't destroyed when we transferred original offices from Caracas to Buenos Aires.

I don't know whether they existed.

BY MR. FISHER:

Q When was this office shift?

A About a year ago, it's about 10 months ago.

Q Was it before or after your testimony here?

A I think, as I remember correctly, it was right in the middle. Right in the process of that change.

Q When for the first time did you learn that Baeza or Osorio had been released from custody?

A It was about four or five days after they had been released.

Q And about how long was that after you visited the investigations building on the 9th?

A About a week to 10 days. I don't recall exactly.

Q And you were told as a fact that they had been released; is that right?

A No. We were told that they were still under arrest and were being detained at another place and we went to the other place and found that they had been released.

Q Who went to the other place?

A The Chilean officers.

Q You just said "We went to the other place."

A I didn't go.

Q You just said "We went to the other place."

THE COURT: I heard him, too. So he said the Chilean officers went.

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Q Do you normally refer to Chilean officers as "we," sir?

A It's a collective thing in an investigative matter.

Q In other words, your frame of mind with regard to November of '73, if the Chileans did something, "We are doing it"?

THE COURT: I will allow it.

A No.

Q You are tlling us then that you did not go to a specific jail looking for Baeza after November 9, 1973, and before -- before December 15, 1973; is that right?

A That's right.

Q Someone else did?

A Right.

Q Now, you just told us that the Chileans told you that he had been released and taken to another jail; is that right?

A No, they said he was still under custody being held at another place.

Q Still in custody at a certain place?

A Yes.

Q Tell us why it's, if you know, that the Chileans would send Chileans to another Chilean jail to see if

Chileans were where they were supposed to be?

A Because there was some question as to whether or not the man had been seen on the street.

Q Who raised that?

A We did. As far as our office in Santiago.

Q Now, when you say "we," you mean United States people?

A Yes.

Q Who had seen Baeza on the street?

A I don't recall.

Q Who told you that?

A I don't recall.

Q And you heard this and the first thing you do is report it to the Chilean police?

A I called and asked if he was still under arrest.

Q And they said, "Yes"?

A Yes.

Q And you said "We have information that he is on the street"?

A Right.

Q And they said, "We better go check"?

A Right.

Q And then were you told about the results of their investigations of their own jail?

A Right, that he had been released about three to

four days previously.

Q So it was about three or four days after Baeza was released that you first learned that he had been released?

A Right.

Q How long before the Chileans told you that in fact he had been released, did you hear that Baeza had been seen on the streets of Santiago?

A It was that same day.

Q The same day?

A Yes.

Q Now, during this time there are communications to your office in Santiago from the U. S. attorney's office of the Eastern District of New York with regard to locating Baeza; is that right?

A During this period of time, no.

Q Prior to January 7, 1974?

A I don't recall that there had been any communications between them during the period of November that you referred to.

Q I am talking about between November and, let's say -- between November, '73 and February of '74.

A Yes --

MR. FRIED: Once again, I object, your Honor.

THE COURT: May I have the question?

(Question read.)

MR. FRIED: My affidavit which was filed

indicates that, and Mr. Fisher is aware of that, that our office communicated with Santiago on December 11, 1973, that I learned of, from Frank Julio, who was in New York, that Baeza and Orsario may have been released from the custody of the Chilean authorities --

MR. FISHER: I object to this, your Honor.

MR. FRIED: I think it's relevant.

MR. FISHER: Then offer the affidavit. Don't read it to the witness now, please.

MR. FRIED: I think you are misleading this witness.

MR. FISHER: I object to that, your Honor. I am only asking questions.

THE COURT: I know, but we can extend this to a point where I won't sit any later and I think that's what I am going to do.

I think you will just have to come back tomorrow, Mr. Cecil. This won't end in 10 or 15 minutes or an hour.

Let's make it 10:00 o'clock tomorrow and I will have plenty of time and be prepared to proceed with Mr. Baeza and I will set this aside for this hearing tomorrow at 10:00.

MR. FISHER: Your Honor, I am not sure I under-

stand what your schedule is going to be. We finish with Mr. Cecil tomorrow and it is put over to Thursday.

THE COURT: No, we will complete tomorrow.

MR. FISHER: I'd like the opportunity to polygraph Mr. Baeza.

THE COURT: Do that any time you want to.

MR. FISHER: When?

THE COURT: Any time.

MR. FISHER: I was hoping to do it tomorrow afternoon, your Honor, and put Mr. Baeza on Thursday.

THE COURT: He can be through with his testimony and then if you find out that some polygraph expert says that he is telling the truth about all his tortures, then I will have a hearing whether I believe it is reached that stage, and I will take it.

One thing has nothing to do with the other.

MR. FISHER: Would your Honor ask someone in your chambers to call West Street and allow me to visit late with Mr. Baeza tonight?

THE COURT: Sure.

MR. FISHER: And my interpreter, your Honor.

THE COURT: (No response.)

* * * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-14

CARLOS BAEZA, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

March 12, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: BERNARD J. FRIED, ESQ.
Assistant U.S. Attorney

IVAN FISHER, ESQ.
Attorney for Plaintiff

(10:45 a.m.)

THE CLERK: United States of America against Baeza.

THE COURT: The record of the proceedings held at side bar is directed to be sealed and delivered to Assistant United States Attorney Bernard Fried until further Order of the Court.

MR. FRIED: Your Honor, could I have marked a few documents, and then I have an application.

THE COURT: Right.

MR. FRIED: First of all, yesterday, as is reflected in the record on pages 107 and 108, I was directed to produce a statement that Agent Cecil referred to and which had been taken by the Chilean authorities from the co-defendant Juan Jose Osorio. I have obtained a copy of this and I would like it to be marked.

That would be Government's Exhibit No. 4.

I request that it be examined by your Honor, as you directed yesterday, and that then it be sealed because it has no relevance to any of the issues in this case and has never been part of the trial in this case and it has nothing to do with the issues presented at that trial.

THE CLERK: A two-page statement so marked as

Government's Exhibit 4 of the hearing.

(The document was then handed to Judge Mishler.)

THE COURT: All right. I agree.

I direct that Exhibit No. 4 in this hearing be sealed for possible review by the Court of Appeals.

MR. FISHER: If your Honor please, may I address argument to that?

THE COURT: Yes.

MR. FISHER: If in fact information gleaned from the interrogation of Osorio was then relayed to Mr. Cecil, which in turn was later --

THE COURT: May I see that again

(Document handed to the Court.)

THE COURT: Go ahead.

MR. FISHER: Which was then later used in connection with the investigation, I think while not dispositive, it would go somewhere along the line of proving the issues properly before this Court in this proceeding, and more particularly one of the theories that I have in mind is that this arrest was made because of -- well, I would rather continue with my cross-examination of Mr. Cecil before stating this, your Honor.

THE COURT: Don't seal it yet.

I can't see the slightest relevancy to the

issues in this case, not the slightest.

MR. FRIED: Next, your Honor, and I don't think it is necessary to be marked --

THE COURT: You couldn't even use that on a motion for a new trial. That is how irrelevant it is.

MR. FRIED: Your Honor, at the original trial and marked as Government's Exhibit 3500-12 is a report of Charles Cecil, which is the other statement that Agent Cecil referred to yesterday concerning his report of what had occurred in Chile on November 8, 1973 and there is contained in paragraph 4 and 5 information concerning the arrest by the Chilean police of the defendant Baeza and the others.

THE CLERK: Shall I mark this?

THE COURT: You have turned this over?

MR. FRIED: It was turned over at the original trial, it was marked at the original trial as 3500-12.

THE COURT: Have you got a different label for the trial exhibits?

THE CLERK: I will just mark it as a hearing exhibit.

THE COURT: Suppose you put that on the back of that exhibit because these documents may be before the Court of Appeals on the trial, so put it on the

back, put down hearing exhibit -- what is it, 5?

MR. FISHER: Right.

THE CLERK: 5, right.

THE COURT: All right.

THE CLERK: So marked.

MR. FISHER: Your Honor, with regards --

MR. FRIED: I am not finished, if I could, Mr. Fisher, let me offer this.

MR. FISHER: Surely.

MR. FRIED: There was some discussion concerning the so-called decree.

THE COURT: The expulsion order?

MR. FISHER: The 807.

MR. FRIED: The original law which provides for the expulsion order, and I had given Mr. Fisher last night this translation of it, and this (indicating) is the official Chilean Registry copy, and I would like to mark these as Court's exhibits so that it is clear what we have turned over.

MR. FISHER: All right.

MR. FRIED: I'm only stipulating to the translation and not as to the interpretation of this, that would be my stipulation.

MR. FISHER: This would be Government's Exhibit 6 and 6A, I guess.

THE CLERK: The paper is 6 and the translation is 6A in the hearing for identification.

MR. FRIED: I would also report to the Court that I have sought from the Drug Enforcement Administration, or rather directed them to provide to me as soon as they can whatever teletypes would be available concerning the arrest of Carlos Baeza in South America. I have not yet received that. When they are received I will so notify the Court.

Lastly, the daily, the so-called daily activity reports of Agents Charles Cecil that are marked Government's Exhibits No. 1 and there may be others in existence, we are looking for those. Now I don't know at this point whether we will have them or not.

That finishes the marking of these.

Your Honor, I would like to make an application concerning the way the hearing is going.

I believe the issue in this case is the method of expulsion or rather how the defendant was taken out of Chile, and not the over-all involvement, role and participation of the United States Government in all activities within the country of Chile.

I think we have gone far afield on this. Certainly the Government has conceded that Carlos Baeza, the defendant, was expelled at the request of

the American Government. That is in an affidavit that has already been filed with this Court, as well as my statement on the record.

Your Honor, the hearing now seems to have somehow shifted or gone in reverse. We have the allegations of the defendant brought before the Court, the Government has denied those allegations in their entirety, and now Agent Charles Cecil has been called by the defense for the purpose of proving those allegations.

It appears what he is doing is cross-examining this Government witness who in no way can be taken to be a hostile witness, and this is certainly going far afield from the requirements in Toscanino. This appears that we are in a general fishing expedition.

The Government requests that the Court limit the hearing.

THE COURT: As I read Toscanino, the manner in which the Government got jurisdiction over the defendant is in issue, the cruelties to which the defendant was subjected is a proper subject of the inquiry if it can be shown that our Government participated in those tortures and cruelties and in obtaining his expulsion.

Now, of course, I can see where even committing

the most grievous assaults on the defendant may be irrelevant to the issue of getting jurisdiction, but since the defendant feels that some of the information is in the possession of the Government, I will give the defendant the opportunity to search in this hearing.

I agree it doesn't speak to the issues as defined by Toscanino but as far as I know this is the first hearing under Toscanino.

MR. FRIED: That is not correct, your Honor, these Chilean expulsions have been the subject of about six different hearings in this district and in the Southern District.

Now I had not filed any written papers with this Court in connection with this particular proceeding because as of yesterday I had not received the formal allegations, but I have an affidavit that I filed recently in the Eastern District of New York in connection with United States against Sergio Lazo, Docket No. 74-CR-493, in which a hearing was held before Judge Costantino, and Judge Costantino had denied the relief sought. Upon the consent of both parties the trial has been adjourned until some time in May with the expectation that the Second Circuit will decide two cases, one

that is presently before it and one from this district in which Judge Weinstein held a hearing and in which --

THE COURT: Judge Weinstein held a hearing.

MR. FRIED: Judge Weinstein held a hearing and allowed the examination of the defendant Sergio Poblette, and that was docket number 74-CR-383. That case is being argued before the Second Circuit on Friday.

Your Honor, I have here five cases in which hearings -- thre are rather more than five cases in which hearings have been held on this issue, and Agent Cecil has testified at at least five different places.

(continued next page)

THE COURT: All right, so it is only a question as to what evidence do you permit.

MR. FISHER: Your Honor, as Mr. Fried well knows, well knows, Poblette and Lazo failed to allege, didn't allege the direct American participation in the torture,at least that is my understanding.

Isn't that your understanding?

MR. FRIED: It is not, Poblette --

THE COURT: Let us proceed with this.

I am going to continue the hearing, I know it is going wild, I will do my best to control it.

MR. FISHER: Your Honor, may I just ask one question with regard to Government's Exhibit 4 for Identification, that is the Osorio statement.

THE COURT: Yes.

That is going to become the most important document in this hearing because you haven't been able to see it.

MR. FISHER: I have one limiting question which would help me in my cross-examination of the witness, I would like to know whether or not the statement reflects if Osorio indicated that Enrique Munoz was involved in cocaine dealings with Baeza, just that.

THE COURT: I don't know whether I should say that or not.

Do you have any objection to me advising Mr. Fisher --

MR. FRIED: Your Honor, I object to any of that being disclosed, that is a statement --

THE COURT: I won't give it to you then.

It is not in the case, it has nothing to do with the case.

MR. FISHER: If the witness could be excused, I would state to your Honor why I ask that.

THE COURT: I don't care why you ask it, the answer is I won't give it to you.

Please take the witness stand.

C H A R L E S C E C I L , having been previously sworn, resumed and testified further as follows:

CONTINUED DIRECT

EXAMINATION BY MR. FISHER:

Q Mr. Cecil, on November 9, 1973 were you told by Mr. Lopez that Osorio had implicated Enrique Munoz?

MR. FRIED: Objection.

THE COURT: Let me hear that question.

(Last question read.)

THE COURT: Overruled, I will allow it.

A As far as I remember, no.

Q Now, sir, returning briefly, briefly to November 9, 1973, as you have indicated, this was a date right

in the middle of an intensive undercover operation and investigation in connection with Baeza and Osorio, right?

A Yes.

Q And Munoz at that point in time,to your knowledge, was in Toronto, Canada?

A Carlos Munoz?

Q Yes, right.

A Yes.

Q And youwere being advised, were you not, of the developments, of various developments that were going on with Carlos Munoz in Canada?

A Yes.

Q And weren't you told that on November 7, 1973 or Osorio had communicated with Munoz telefonically, Carlos Munoz?

A I don't recall the exact date, Mr. Fisher.

Q Shortly after being --

Can we agree on this, Mr. Cecil, you were advised shortly after Munoz, Carlos Munoz arrived in Toronto that he communicated with Osorio telefonically?

A I think that is correct, I am not sure.

Q And since you knew that Mr. Osorio wasn't able to communicate telefonically from the Chilean jail, it had to be before November 8th that this communication occurred, right?

Q Now, you were told, were you not, that Mr. Osorio seemed nervous on this telefonic communication?

A I don't recall any of that.

Q I am showing you --

MR. FISHER: This is a transcript from the trial record, your Honor.

THE COURT: Of course.

I understand the purpose of this examination, Mr. Fisher.

MR. FISHER: I don't think so, most respectfully.

THE COURT: I certainly do --

MR. FISHER: I am showing --

THE COURT: You are trying to get some inconsistencies --

MR. FISHER: No, your Honor, this is not an inconsistency --

THE COURT: (Continuing) in testimony here and then come before me on a motion for a new trial.

MR. FISHER: Your Honor, this is not the testimony of Mr. Cecil, as I was just going to point out.

THE COURT: It doesn't matter, it doesn't matter, that still is the purpose.

MR. FISHER: No, your Honor, it is not.

THE COURT: Go ahead, I just want the record to show that I understood the purpose of this hearing and it is a misuse of the process.

MR. FISHER: Your Honor, that is absolutely not the case, and if you wish, I will explain precisely what it is I am doing --

THE COURT: Go ahead with your examination, it takes too much time.

BY MR. FISHER:

Q I am showing you page 428 of the transcript in 74-CR-14 of July 24, 1974.

Now I advise you that this is not your testimony but the testimony of Mr. Munoz.

Would you read --

MR. FRIED: Objection as to the form of the question.

THE COURT: Objection sustained.

Q Will you look at page 428 of 74-CR-14, July 24, 1974 transcript, and I ask you to read that to yourself.

Does that refresh your recollection as to whether or not you were told that Osorio had called and seemed nervous on the phone with Carlos Munoz in Toronto?

THE COURT: I don't care how many times you protest that the purpose of this examination is

relevant to this hearing --

MR. FISHER: Your Honor, I warrant that you are just wrong.

THE COURT: Yes?

Go ahead, next question.

Q Is your recollection refreshed?

A I wasn't advised of this conversation.

Q You were not?

A No.

Q At any point prior to November 9, 1973 were you told that the true nature of Carlos Munoz' participation in the investigation might have become known to the other and/or Osorio?

MR. FRIED: Objection, your Honor.

THE COURT: May I have that question?

(Previous question read.)

THE COURT: Overruled, I will allow it.

A No.

Q What was never said?

A No.

Q You were told however prior to November 8, 1973 -- prior to November 9, 1973 that there was some difficulty in arranging for the connection between Carlos Munoz and his recipient in Canada; isn't that right?

A I think it was after December 9th.

THE COURT: We are talking about November 9th.

THE WITNESS: November 9th.

MR. FISHER: Did I say December?

I meant November.

A November, I think it was after November 9th.

Q It wasn't until after November 9th that you were told that there was difficulty?

A Right.

Q You are sure of that?

A (The witness indicated in the affirmative.)

Q You have to give your answer orally.

A Yes.

Q Now, sir, you have told us that Mr. Poblette was the Chief of the Drug Squad in Chile; isn't that right?

A Yes, sir.

Q Now, you of course were a Drug Enforcement Administration Agent; right?

A Yes.

Q Your responsibilities related only to investigations of narcotic trafficking; isn't that right?

A Yes, sir.

Q You didn't have overall responsibility for all crime committed against the interest of the United States,

just drugs; right?

A Right.

Q So necessarily it is to say that your association with various law enforcement offices of Chile, of the Chilean government, would be stronger with people on their Drug Squad; isn't that right, you worked more closely with them?

A Right.

Q Than the rest?

A Yes.

Q Would you say that your relations with the Chilean Drug Squad were better than those of the other Chilean law enforcement agencies?

A No.

Q You wouldn't?

A No.

(Continued on next page.)

Q It was with the Chilean Drug Squad that you and Franquille, your colleague, participated in joint investigation; isn't that true?

A Right.

Q In fact on one occasion there was a joint buy and bust operation, wasn't there?

MR. FRIED: Objection as to what --

THE COURT: Ojection overruled.

A Right, yes.

Q Right?

A Yes.

Q Mr. Franquille was acting as undercover purchaser and the Chilean police were in electronic communication with him and prepared to make the arrest; you recall that, don't you?

A No, sir, I don't.

Q You recall an investigation concerning Jorge Dabed?

A Yes.

THE COURT: How far are we going, Mr. Fisher?

MR. FISHER: Just to flesh you, your Honor, what I submit was the extremely close association that -- between the Drug Enforcement Administration representatives and the Chilen Drug Squad, and then to make another

point, your Honor.

MR. FRIED: The Government has conceded that the Drug Enforcement Administration has had close liaison with the Chilean law enforcement officers.

THE COURT: I would imagine if it weren't a close relation there would be no reason for the Drug Enforcement Administration agents to be down there at all as foreigners. That is conceded.

Now go on to another point.

MR. FISHER: I don't concede that your Honor, what you just said.

THE COURT: Continue.

BY MR. FISHER:

Q Now, Mr. Cecil, isn't it a fact, sir, that you were told on November 9, 1973 that Mr. Baeza was charged with a crime relating to false documents?

A No sir.

Q No?

A NO.

Q You were never told that?

A No.

Q Did you ever inquire as to what he was charged with?

A I assumed it was drugs.

Q Did you ask?

A I don't think I did, no.

Q Were you told?

A No.

Q On the morning of November 9, 1973 you neither asked nor were you told what the charge was?

A With regard to Mr. Baeza, no.

Q Weren't you curious?

A No.

Q YOu didn't, you didn't want --

THE COURT: Objection sustained.

Don't be offended because I sustained an objection, I want this hearing to be over within a reasonable time.

MR. FISHER: The credibility of this witness--

THE COURT: I beg your pardon?

MR. FISHER: I submit the credibility of this witness --

THE COURT: Objection sustained.

MR. FISHER: (Continuing) Is a main issue.

THE COURT: He already answered. It is argumentative after this and is absolutely ineffective on the issue of credibility. Two or three or four times is enough, Mr. Fisher.

Next question.

I don't have a jury here.

BY MR. FISHER:

Q I am showing you what has been marked as Hearing Exhibit 5 for identification. That is your signature on the bottom, isn't it?

A Yes, it is.

Q This is a report prepared by you?

A Yes, it is.

Q It was prepared on 11/16/73; isn't that right?

A I didn't notice the date, but I believe that is correct.

Q And do state in paragraph 4 that on November 8, 1973 Chilean police arrested Osorio, Baeza, Munoz, DuKai-Resteppo and Gonzalez, and these arrests were the result of an investigation initiated by the Chilean police?

A YEs, sir.

Q Were you aware at the time that you wrote the report what that investigation involved?

A No.

Q At the time you wrote the report, did you make any effort whatsoever to find out what the investigation involved?

A No.

MR. FISHER: Government Exhibit 4 for identification, which has not been shown, your Honor, does it shed any light on this particular area of inquiry?

THE COURT: Next question, Mr. Fisher, I don't answer your questions.

MR. FISHER: I am making a request of the Court for disclosure, then.

THE COURT: Denied.

If you have nothing with this witness that is material to the issues, I will ask Mr. Fried to cross examine him.

Do you have anything further with this witness?

MR. FISHER: On the issues?

MR. FISHER: Yes, your Honor.

THE COURT: Please ask him on the issues.

BY MR. FISHER:

Q Do you know whether or not Mr. Franguille ever discussed with you the reason for -- withdrawn.

Did Mr. Franguille ever discuss with you the reason for the Chilean's arrest of Baeza and Osorio?

THE COURT: The "reason" meaning the charge?

MR. FISHER: Yes.

A I don't recall, Mr. Fisher, I am sure that there was some discussion but I can't say for certain.

Q And since you didn't know what the charge was, you certainly didn't tell Mr. Franguille what the charge was; right?

A Right.

Q Right.

You had no idea what the reason for the arrests was and so you could communicate no such idea to Mr. Franguille?

THE COURT: Objection sustained. He said he had an idea, whether it was right or wrong, but he said he believed it was that.

Q You just assumed that; right?

THE COURT: That is an idea, Mr. Fisher.

Q Were you ever present when Mr. Franguille had any discussion with any Chilean Law Enforcement agent about the charge or the reason for the arrest of Baeza and Osorio?

A No, I wasn't.

Q Did you participate in a telephonic conversation with Mr. Bernard Fried and Mr. Franguille -- withdrawn.

You were stationed in Santiago, Chile, in and after 1973 as well; isn't that right?

A Yes, sir.

Q During that period of time you were keeping

daily activity reports, April through May; is that right?

A Yes.

Q Generally speaking, sir, how many requests for arrests of various individuals of the Chilen law enforcement authorities were made by you?

MR. FRIED: Objection.

THE COURT: Objection sustained.

Q Did you ever request any Chilean police authority to arrest anyone?

A Yes, sir.

Q How many times?

A It could have been as many as ten.

Q And was a request for an arrest ever denied?

A No.

Q With regard to Mr. Franguille, do you know how many times he requested of the Chilean police authority the arrest of individuals?

MR. FRIED: Objection, your Honor.

THE COURT: Will you read that?

(Record read.)

THE COURT: Sustained.

Q Do you know whether Mr. Franguille ever requested of the Chilean authority, besides the ten arrests that you requested, in addition to those arrests?

MR. FRIED: Objection, your Honor.

THE COURT: Sustained.

Q To your knowledge was any request by a Drug Enforcement agent of the United States to the Chilean police authority for the arrest of anyone ever denied to your knowledge, by the Chilean police authorities?

A Yes.

Q Who -- well, withdrawn.

How many?

A On numerous occasions.

Q By whom were those requests made?

A On at least one instance, my own.

Q Didn't you just tell us that you never had a request denied?

A Possibly, if I did, I was mistaken.

Q Oh!

So you had one request denied?

A Yes.

Q And how many other requests, to your knowledge, were denied?

A Requests?

Q By Drug Enforcement agents.

A For arrests?

Q Yes.

A There were several, I can't --

Q Out of how many?

A 25 to 30.

Q Do you know whether or not the United States ever sought the extradition of Carlos Baeza?

A No.

Q You don't know?

A WE didn't.

Q You did not?

A No.

Q Do you know whether or not the United States ever sought the extradition of anyone from Chile during your tenture as Drug Enforcement Administration Agent in Santiago, Chile, on any narcotic offenses?

A Papers were filed on several, yes.

Q Papers were filed, where, in Chile?

A Chile.

Q And those were processed -- I am sorry.

Those were filed with regard to individuals prior to November of 1973; isn't that right?

MR. FRIED: Your Honor, I am sorry, I was getting some information and I didnot hear that question.

MR. FISHER: I will repeat it.

DIRECT EXAMINATION

BY MR. FISHER (Cont'd):

Q With regard to the extradition papers that you say were filed with regard to some individuals, those have been filed prior to November of '73; correct?

A I'm not sure. It was about that time. It could have been a few days before or a few days after.

Q But certainly in November of 1973, no extradition request had as yet been denied by the Chilean government that you were aware of?

MR. FRILD: Objection. I withdraw the objection.

A None had been denied.

Q Is that true right up until May of '74?

A As far as I know, yes.

Q But sometime in April of 1974, someone in your office requests the arrest by the Chilean authorities of certain individuals; isn't that true?

A Yes.

Q Chilean citizens?

A Yes.

Q Among them, Mr. Baeza?

A Yes, sir.

Q How many others?

A Seven or eight.

Q Jorge Dabed?

A Yes.

Q Carlos Choy Caballos?

A Yes.

Q Sergio Poblete?

A No. He was already in jail.

Q Rafael Mellafe?

A Yes.

Q Sergio Lazo?

A Yes.

Q Raoul Valenzuela

A Yes. No, excuse me, he was already in jail also.

Q And when was this request made of the police authorities in Chili?

A At various times. They weren't all made at the same time.

Q With regard to Baeza, when was the request for his arrest made?

A Sometime in early January.

Q January of '74?

A Yes.

Q And at the time, what papers if any were filed

with the Chilean government?

A None.

Q It was simply an oral request?

A Yes.

Q You just phoned up somebody in Chile -- who -- who in the Chilean government, did you call and ask to arrest someone?

A It could have been any of several people.

Q You don't recall?

A I don't recall, no.

Q Well, what group could it have been?

MR. FRIED: Objection, your Honor.

MR. FISHER: We are talking about policemen, are we talking about a forensic officer, are we talking about an ambassador?

Q What kind of Chileon official are we talking about that you might have called in order to have someone arrested?

MR. FRIED: Objection, your Honor.

THE COURT: Sustained as to form.

Q Would it have been --

THE COURT: Sustained as to form.

Q Was it in fact --

THE COURT: Sustained as to form.

MR. FISHER: "Was it in fact"?

Q Did you call a Chilean policeman in order to request the arrest of Carlos Baeza

A Yes.

Q Did you at any time follow up your oral request with a written request?

A No.

Q So far as you know, no written request was ever made for the arrest of Carlos Baeza, by the United States Government?

A So far as I know, no.

Q And so far as you know, the arrest was perfected solely on your oral request?

A Yes.

Q And that would be the case with regard to the six others we've discussed, that you mentioned?

MR. FRIED: Objection, your Honor.

THE COURT: Overruled. I will allow it.

A With one exception.

Q With one exception?

A Yes.

Q Now, when you made this oral request for the arrest of Baeza, did you also request that Baeza be detained until some method could be devised in order to bring Baeza to the United States?

A Yes.

Q Now, in January of 1974, with regard to Baeza, there was some problem with time, wasn't there, in terms of getting Baeza to the United States?

MR. FISHER: I withdraw that, your Honor.

Q Were you told by the Chilean police, pursuant to your request for Baeza's arrest, that it would take some time in order to get Baeza to the United States, or to your custody?

MR. FRIED: Objection as to --

THE COURT: Overruled. I will allow it.

A I wasn't told, no.

Q You weren't told.

Do you know if someone was, to your own knowledge, they had to find him?

THE COURT: At that time were we being pressed by the lawyers for a severance in proceeding to trial for delay?

MR. FRIED: No, your Honor.

THE COURT: Was the indictment already returned?

MR. FRIED: The indictment was returned on January 11th, I believe.

THE COURT: Had the other defendants pleaded?

MR. FRIED: They had pleaded not guilty. I had filed this affidavit, which is part of this

record --

THE COURT: Maybe I was putting pressure on and saying no severance, let's get to trial.

MR. FRIED: This hadn't been assigned to you, your Honor.

THE COURT: In other words, I didn't want two trials, I wanted Baeza here.

MR. FRIED: On January 11th I had made a motion before Judge Dooling for a 90-day extension --

THE COURT: When did Mr. Fisher come into the case?

MR. FRIED: In July or June of 1974.

At this time the reason that I gave Judge Dooling was contained in my affidavit. I think that is what Mr. Fisher is alluded to.

THE COURT: Go ahead.

BY MR. FISHER:

Q When were you advised, if ever, that Baeza had been arrested by the Chilean authorities?

A Approximately two weeks before we brought him to the States.

Q You brought him on May 4, 1974; right?

A Approximately two weeks before then.

Q Approximately two weeks before then?

A Yes.

Q And you were aware, were you not, that for that two-week period Baeza was being held in Chilean custody, isn't that right?

A Yes.

Q Now, did you make any request of the Chilean government to treat him as roughly as someone would be treated in the United States if he were in jail?

A I made no request at all.

Q None?

A No.

Q But at that point in time you were aware of reports, if not of your own actual knowledge, you were aware of reports that the Chileans had a way sometimes of torturing people they had arrested; isn't that right?

A I was aware of that.

Q Did you make any effort to make sure that didn't happen to Baeza?

MR. FRIED: Objection, your Honor.

THE COURT: Overruled. I will allow it.

A No, I didn't.

Q Who specifically made arrangements for the transportation of Baeza and company to the United States?

A I made the airplane reservations.

Q When in point -- May 4th is the date that you left Santiago; isn't that right?

A Yes.

Q On the Braniff flight, I believe it was?

A 988.

Q Now, when in point of time -- how many days prior to that had you contacted Braniff Airlines with regard to reservations?

MR. FRIED: Objection, your Honor.

The Government concedes that he made --

THE COURT: Overruled. We finally come to the issues. We've had a day, an afternoon and about 40 minutes of hearing, and I'm happy to see Mr. Fisher finally ask questions on the issues.

Now, I will allow you to examine. Let's see the extent of the American participation.

Go ahead.

THE WITNESS: It would be difficult to say.

Q Certainly a couple of days ahead of time; isn't that right?

A Right.

Q Would you say about a week or so, roughly?

A Yes.

Q And you knew there would be a number of people,

a number of Chileans being brought back; right?

A Right.

Q And in fact, did you have the whole first class section ultimately on 988?

A Yes, sir.

Q So obviously then you had to give the airline about a week's notice, at least?

A We had to change the reservation several times.

Q Would you say it would be fair to state that your initial inquiry arose with regard to the Braniff Airline occurred like about April 27th, thereabouts, certainly no later than that?

A It wouldn't have been any later than a week ahead of time.

THE COURT: Were there Chilean officials or policemen on the plane?

THE WITNESS: Yes, your Honor.

THE COURT: Did you pay for their passage, too?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

BY MR. FISHER:

Q Now, was some form of agreement reached between you or Mr. Franguille and the Chilean police as to the timing of the filing of an expulsion order by the Chilean government against the defendants?

THE COURT: I will sustain as to form.

Did you have any conversation with Mr. Franguille as to the timing of an expulsion order?

That calls for a conclusion, "Did you have an agreement with him?"

MR. FISHER: Thank you, your Honor.

THE WITNESS: No, we didn't.

BY MR. FISHER:

Q Were you told by the Chilean government when it would be that they would be ready to expel Baeza and company?

A We were told that we could expect to have them on the plane on that Saturday, which was May 4th.

THE COURT: Did you fix that date or did the Chilean police fix that date?

THE WITNESS: The Chileans.

Q Wasn't there some discussion about that date so you could match your transportation arrangements with their expulsion arrangements, wasn't there a little negotiation about the date?

A Certainly.

THE COURT: May I have the statute on expulsion, the Chilean statute?

MR. FRIED: Your Honor, this is the translation,

Government Exhibit 6-A.

Government's Exhibit 2 is the expulsion order that was issued pursuant to that.

BY MR. FISHER:

Q Now, sir, on May 4th, 1974, you were at Pudahuel Airport?

A Yes.

Q Prior to that, you had received a communication from some officer of the Chilean government advising you that Mr. Baeza and company were ready?

A Yes.

Q Right?

A Yes.

Q And you were advised to meet Baeza and company where?

A At the airport.

Q Do you recall which Chilean police officer gave you what information?

A No, sir, I don't.

Q In any event, you go to the airport and arrive at what time?

A It was about an hour to an hour and 15 or 20 minutes before the flight left.

Q And you had already made arrangements for

assistance along the route, had you not?

A No, sir.

Q Were you going to accompany the Chileans to New York as the only American law enforcement officer, or had you made arrangements for assistance?

A There was some other officers that happened to be in the country.

THE COURT: May I know this as a matter of information, and possibly concern:

They were expelled on what date?

THE WITNESS: May 4th, your Honor.

MR. FISHER: No, they were expelled -- I'm sorry, your Honor.

What do you mean by expelled?

THE COURT: When did they board the plane?

THE WITNESS: May the 4th.

THE COURT: Is there any procedure for appealing these expulsion orders to a Court of any kind under Chilean law?

MR. FRIED: I'm not aware of any, your Honor.

MR. FISHER: Well, your Honor, in the case of Sergio Lazo, and I have -- Lazo, by the way, was on board Flight 988, wasn't he?

MR. FRIED: Yes.

THE COURT: This is based on some investigation conducted by the Director General of Investigation Police, dated April 30th, in which he found that each of the parties -- it doesn't seem to have any specific charge against each individual, but all are charged, apparently, with all these crimes.

It says, "Each one of them has a long criminal record," and then it gives the crimes.

MR. FISHER: May I inquire?

THE COURT: Don't ask him any questions of law. I am asking you and you can advise me.

BY MR. FISHER:

Q Do you remember making inquiry --

THE COURT: Excuse me, before you go on.

A copy of this goes to the judicial office.

MR. FISHER: In that regard, may this be marked as Baeza's Exhibit 1 for Identification --

THE CLERK: "A"?

MR. FISHER: "A".

THE CLERK: In the hearing. So marked.

(So marked.)

THE COURT: It says, "Fully processed."

I don't know whether the parties against whom the order is issued are informed in any way.

Would you know, Mr. Fried?

MR. FRIED: I don't, your Honor. I have read the transcripts in the other cases in which this has come up, and the position has been of both Judge Gagliardi and Judge Stewart that the order and its nature is valid and the --

THE COURT: I won't go beyond that. It's for informational purposes.

MR. FRIED: That has been the Government's position, I do not know what the internal procedure within Chile is to appeal this.

MR. FISHER: I am about to offer something in that regard.

THE COURT: Even if these were invalid under Chilean law, as I read Toscanino, it is only where the Government, our agents participated, that is of any significance.

MR. FRIED: I think the Luan case is the one -- the second decision in the Toscanino series is the one that held that absent any protest from the foreign country with our State Department --

MR. FISHER: That is only in regard to the treaty violation, your Honor.

THE COURT: That's why I couldn't understand

all the questions about treaty. One decision just said that the defendant has no treaty rights, period. It's the Government that has treaty rights.

MR. FISHER: The reason why I was asking that was because of Judge Mansfield's language where he says, "Where an abduction is conducted unnecessarily."

THE COURT: I said I thought Luan -- Luan, I think, emasculated Toscanino, is the proper word.

MR. FISHER: It doesn't.

THE COURT: Off the record.

(Discussion off the record.)

MR. FISHER: Your Honor, Defendant's Exhibit A for Identification -- I could offer this later and not impose upon Mr. Cecil.

This relates to the area of inquiry you just made.

THE COURT: Do you know whether the parties were served with an expulsion order? Were their families served? Did they know this was going to happen?

MR. FISHER: Sergio Lazo had a stay from the Supreme Court of Chile directing them not to send him anywhere, signed May 4th, so apparently there is a procedure, your Honor.

THE CLERK: Defendant's Exhibit A is an order from the Court in Chile.

BY MR. FISHER:

Q Mr. Cecil, at the airport you met Mr. Baeza, who was then in the company of Chilean police officers; is that right?

A Yes.

Q Prior to that, had you made arrangements with any other Drug Enforcement Administration official to accompany you on this trip?

A Yes.

Q Who?

A There are five agents that were in the country that accompanied me.

Q There were five Drug Enforcement agents in the country?

A Yes.

Q They were not normally stationed there; right?

A No.

Q These were brought in for this purpose alone; isn't that right?

A No.

Q They were there in connection with a seminar, a Drug Enforcement seminar?

A Training.

Q Conducted with the Chilean government?

A Yes.

Q In fact, our drug agents were teaching the Chilean drug agents in the seminar; isn't that right?

A That's correct.

Q And so they were there and they were asked to accompany the Chilean citizens who had been expelled -- withdrawn.

So these five agents were asked to accompany you on this Braniff Flight 988 on May 4th?

A Yes.

Q And they did so?

A Yes.

Q And they were there to maintain security; isn't that right?

A Yes.

Q Now, were you present if and when Mr. Baeza was seen by a doctor?

A No, other than on the plane.

Q A doctor appeared on the plane?

A A doctor accompanied us.

Q Who made arrangements -- who, if anyone, made arrangements for the presence of a doctor, Mr. Cecil?

A The Chilean police.

Q The Chilean police?

A Yes.

Q Had there been any discussions with regard to the doctor's presence with you?

A The airline requested it, that's the reason he was there.

Q The airline requested the doctor there?

A Yes.

Q Did you ask anyone why a doctor needed to be there?

MR. FRIED: Objection, your Honor.

THE COURT: Overruled. I will allow it. This is in the form of argument.

Mr. Fisher is trying to tell the Court that they must have been beaten and sick because there was a doctor on board.

MR. FISHER: I think that is an inference, your Honor.

THE COURT: The question is whether you had a talk, a discussion with anybody about why a doctor was necessary on the plane.

THE WITNESS: The airline just requested it, your Honor, and we provided one.

THE COURT: Was it a Chilean doctor or an American doctor?

THE WITNESS: A Chilean doctor.

Q You just said the airline requested one and we provided one; "we," again referring to the Chileans?

A I was there when he came --

THE COURT: Who paid his fee?

THE WITNESS: The U. S. Government did.

Q So this is a doctor paid by the Government; right?

A His transportation was paid by the Government.

THE COURT: Only transportation?

THE WITNESS: Yes, sir.

THE COURT: You paid him no fee?

THE WITNESS: And per diem expenses while he was here in New York.

Q You just said "We got him." "We," now referring to the United States Government, the United States Government got this doctor for the trip; right?

A The Chilean police got him.

Q At the United States' request?

A As a result of the airline's request, yes.

Q Did you see the doctor administer to anyone of the -- well, to Carlos Baeza?

A He asked each and every one of them how they were feeling and if they had any problems, and to my recollection all said no.

Q To your recollection?

A Yes.

Q Do you have a specific recollection of Baeza saying no?

THE COURT: Answer vocally, please, because it's difficult to hear.

THE WITNESS: To my recollection, the doctor asked all of the six defendants whether they had any problem, whether they were ill, and made a brief examination and there were no problems.

THE COURT: We skipped part of this.

Did you accompany the persons expelled to the airport or did you meet them at the airport?

THE WITNESS: I met them at the airport, your Honor.

THE COURT: Did you see when they exited some vehicle?

THE WITNESS: Yes, sir.

THE COURT: What kind of vehicle did they exit?

THE WITNESS: They were brought to the plane side in, like, a paddy wagon and put right on the

airplane.

THE COURT: Were there armed Chilean guards that accompanied them?

THE WITNESS: Yes, your Honor.

THE COURT: Did any Americans accompany them, American agents accompany them to the plane?

THE WITNESS: I don't recall. It's possible that Mr. Franguille was -- I know he was at the plane, but I don't believe that he drove in the paddy wagon to the plane. It's possible that he did.

THE COURT: And did they board the plane before any other passengers boarded the plane?

THE WITNESS: No. They boarded after the rest of the passengers were on board.

THE COURT: Were they in cuffs or under any restraint when they boarded the plane?

THE WITNESS: Yes, your Honor.

THE COURT: And how -- how were they restrained?

THE WITNESS: They were handcuffed.

THE COURT: To each other or were they handcuffed behind the back?

THE WITNESS: As far as I remember it, they were handcuffed -- one's left hand to the other's right, six of them, three pair.

THE COURT: And when they were seated, were they seated in a section of the plane?

THE WITNESS: Yes, your Honor.

THE COURT: How were the Chilean police posted in the plane and where were the American agents?

THE WITNESS: The defendants were seated on the left side in three seats -- six seats, alongside of each other.

The Chilean police were seated behind each of them.

THE COURT: Rear seats, taking the rear portion of the plane?

THE WITNESS: No, first class cabin.

THE COURT: You went first class?

THE WITNESS: Yes, your Honor.

THE COURT: Any marks-- did you see any marks of any kind that might have been the result of any beating or assault?

THE WITNESS: No, your Honor, I didn't.

THE COURT: All right. Go ahead.

BY MR. FISHER:

Q Did you look at the wrists of Carlos Baeza during that flight?

A I didn't notice anything.

Q Did you look at his wrists?

A He was handcuffed.

Q You were unable to see the skin under the handcuffs?

A I didn't notice one way or another, Mr. Fisher.

Q So you don't know whether or not there were any marks on his wrists; isn't that right?

A I didn't notice any. I don't remember.

Q You don't know whether or not there were any marks on his ankles; right?

The only thing you can tell us is you didn't notice anything on his face; right?

A Right.

Q He was fully clothed?

A Right.

Q You made no effort to undress him?

A No, sir.

Q You never even saw his arms, I mean the skin of his arms; isn't that right?

A No, I didn't.

Q But didn't the doctor take his blood pressure on the plane?

A I believe he did.

Q And didn't he roll up his sleeve to take the

blood pressure?

A I would assume so.

Q Well, then didn't you tell us that you saw the doctor administering to Mr. Baeza, and that Mr. Baeza had no problems, didn't you just tell us that?

A The doctor made a cursory examination and asked him how he was feeling.

Q You told us you saw the doctor --

MR. FRIED: Objection, your Honor, argumentative.

Q Examine --

THE COURT: Go ahead.

Q You told us you saw the doctor examine Mr. Baeza, ask him if he had any problems, Baeza said no; isn't that what you told us?

A Right.

Q And then you told us you never saw Baeza's arem except clothed?

A I don't recall seeing it.

Q Now, you tell us that the doctor rolled up Mr. Baeza's sleeve in order to take his blood pressure; right?

A If he did he did. I don't remember.

Q The fact is, you don't have too good a

recollection of any of this; isn't that true, Mr. Cecil?

A Yes, I do.

Q You remember clearly and distinctly now that Mr. Baeza told the doctor, "I have no problems"; is that right?

A The doctor examined everybody and as far as I know nobody was ill.

Q As far as you know, nobody was ill?

A Right.

(Continued on next page.)

Q Now --

THE COURT: Where were you seated in the plane in reference to Mr. Baeza?

THE WITNESS: Little bit to the front and to the right. One seat up.

MR. FISHER: Excuse me.

Q Mr. Baeza was handcuffed in the plane, wasn't he?

A Yes.

Q Do you know whether or not Mr. Baeza was given any medication by the doctor?

A I know he wasn't.

Q You know he wasn't.

How do you know he wasn't?

A I didn't see the doctor give him any medication.

Q Were you watching the doctor and Baeza the whole trip?

A No.

Q So you don't know.

A I know what the doctor told me.

Q What did he tell you?

A He told me he didn't give him any medication.

Q Now --

THE COURT: Did the doctor make a report of the

condition of the persons expelled to you or to your agency?

THE WITNESS: Yes, sir, he did.

THE COURT: Have you seen that?

MR. FISHER: No.

THE WITNESS: It wasn't a report. It wasn't a —

THE COURT: I mean a written report.

THE WITNESS: No.

THE COURT: There's no written report anywhere?

THE WITNESS: No.

Q Mr. Cecil, getting back to that area of inquiry covered by his Honor a few moments ago, the time between the arrival and the vehicle you described as a paddy wagon of Baeza and company and the time that they get on the plane: one thing is clear, whether or not Mr. Franguille was there, he may have been, he may not have been, as you have indicated nevertheless, it is clear that the defendant Baeza and others were in physical custody of the Chilean Police; is that right?

A Yes.

Q No doubt about that.

And then the Chilean Police handed them over to you; isn't that right?

MR. FRIED: Objection to the phrase, handed them over to you.

Q Well, at what --

THE COURT: May I have that question.

(Record read.)

THE COURT: Sustained as to form. Handed them over may be a legal concept. It may be a physical concept.

Q Physically speaking, what happened with the defendant Baeza and others after they arrived in the custody of the Chilean Police? How were they brought to you?

A They were placed on the plane by the Chilean Police, handcuffs, seated, and the plane took off. I guess you could say they were in my custody when the plane took off.

THE COURT: Were the Chilean Police accompanying the agents, the American agents?

THE WITNESS: Yes, your Honor.

THE COURT: Five Chilean Police?

THE WITNESS: Six.

THE COURT: Six Chilean Police and five American agents.

THE WITNESS: Six including myself.

THE COURT: Six American agents.

Q Now, Braniff International is not a Chilean national airline, right?

A No.

Q That's the airline that you use, Braniff, right?

A Yes.

Q At no point on May 9th -- I'm sorry -- on May 4, 1974, in your presence were any of the Chilean defendants, specifically Baeza, at no point was he free to leave custody; isn't that right?

A No. There was no point that he could leave.

THE COURT: Free to leave custody generally means to leave the place of confinement. You don't mean out of the airplane, do you?

MR. FISHER: I meant at the airport.

THE COURT: Oh.

Q In fact, at no point in your -- in your view was Baeza ever not literally physically restrained; isn't that true?

A He was handcuffed.

Q Through the whole time? He was handcuffed when he arrived at the airport, right?

A Yes. Right.

Q He was handcuffed in the plane?

A Right.

Q He was handcuffed when he was taken out of the plane, right?

A Yes.

MR. FISHER: I have no further questions.

THE COURT: All right, Mr. Fried.

What happened when he arrived here? Was he given a physical examination, do you know?

THE WITNESS: I don't know, your Honor.

THE COURT: Was he taken to West Street immediately or processed in this court?

THE WITNESS: I don't know. When we landed Agents from our New York office picked the defendants up. And I assume they processed them.

THE COURT: I see. Who was the agent that picked him up?

THE WITNESS: I don't recall.

THE COURT: Do we have any reports of the physical condition of Mr. Baeza and the others when he arrived here? I know that West Street would normally give him a physical if he were housed at West Street.

MR. FRIED: They were housed in West Street. I have never seen the reports. I assume there was a physical when they arrived. And I was never notified that there was anything particularly the matter with him.

THE COURT: I would like to see the report of the

physical examination of this -- of Mr. Baeza at West Street. If he was examined before then, I would like to see it.

MR. FRIED: Fine, your Honor.

Before I begin my examination, I'd like to state for the record that --

THE COURT: I was more fortunate in Mr. Toscani I think he came into this court the day after he arrived. And when he complained about mistreatment, I put on the record what I saw.

But with Mr. Baeza, I don't know when I saw him.

MR. FRIED: Mr. Baeza was arraigned the following day before Judge --

THE COURT: It would have come to me unless I was busy.

MR. FRIED: It wasn't. If you recall, this was originally Judge Dooling's case. And you didn't have it assigned to you until we were in South America. And there was a problem with Judge Dooling's calendar.

THE COURT: I took some of his cases. This was one of them.

MR. FRIED: There was an arraignment. I believe

it was May -- May 7th. There was an arraignment of the defendant Baeza.

THE COURT: Did you handle the arraignment?

MR. FRIED: I did not. The Assistant was James Watson. I was --

THE COURT: It may be interesting because if the defendant complained about maltreatment a judge might normally put on the record what he saw. I am not sure it happened. But I know it happened with Toscanino. You can read that. I remember assigning counsel to him. He told me how poor he was and couldn't afford counsel, and he was sick and beaten all about the face and hands. And I asked --

MR. FISHER: Are you confusing most respectfully Toscanino with David?

THE COURT: No. I remember Mr. Toscanino. I could see him right there. And I saw something, a little bruise on his head. And I said, all I see is a little bruise. And I asked to see his arms. And I even had him take his shirt off.

MR. FISHER: This is David. I have the proceedings. As I recall, I represented Mr. Toscanino immediately after the arraignment.

THE COURT: I assigned Mr. Michael Sklar to

Toscanino and then you came in later. You check that out.

MR. FISHER: That's possible.

THE COURT: Now, it would be interesting to check the arraignment of Mr. Toscanino. I remember it only because he was telling me how poor he was. And so I assigned counsel to him. And then counsel told me that Mr. Fisher was retained. This was two or three weeks later. And I said, oh, Mr. Toscanino must be a rich man. That's why I remember it.

MR. FISHER: Is this transcript forwarded to the IRS?

THE COURT: I think -- well, I may, if I have -- if I have the time, may ask for the -- it doesn't have to be a transcript. Maybe the reporter can come in and read back what happened in the Toscanino arraignment or the first appearance when he asked for counsel.

MR. FRIED: Let me respond to your Honor's question.

THE COURT: Whenever there is a claim of mistreatment by anybody, the first thing I usually do is put it on the record. And I remember he claimed he was beaten across his back. I asked him to take his shirt off. And I described what I see. I think I did that

with Mr. McCormack when he came here as a witness and claimed he was beaten in the Matteo case. And I saw scratches on his back. And he just had one of his inmates scratch him on the back. So they weren't beatings. And I remember Toscanino. I may have done it with David. And I don't recall David. I do recall Toscanino.

MR. FISHER: You may be right. Because as I recall, David went into a hospital here.

THE COURT: Maybe when you bring -- I've got a notation here, Toscanino hearing, set it down. I wanted to get rid of that. You might look at those minutes and you may be prepared better -- in quotes better for trial and in the hearing.

MR. FRIED: First of all, your Honor --

THE COURT: He claimed he is a quick healer in the arraignment that occurred on May 7th. I have no recollection of any claim or being told that there was any claim at that time.

MR. FRIED: We can check. There is no mark on the file. And I am checking the minutes.

But let me address --

THE COURT: It would be interesting because it may be an appropriate inquiry.

MR. FRIED: Your Honor, your question raised the very issue that I was complaining about in the beginning of this morning, and that is, I am -- I am in a position of having to respond to allegations that were merely made through an offer of proof. For example, there's been a confusion here I think -- there's no allegation -- at least no allegation made yesterday -- there may be now an allegation that the defendant elicited this conversation that he was in any way mistreated during the arrest that occurred in April and May of 1970. The allegation of mistreatment --

THE COURT: We are not through with the hearing yet. Didn't you hear Mr. Fisher in his opening say, while Mr. Baeza was struck six times in the stomach, it was with Mr. Cecil's nodding.

MR. FRIED: That was in November. That was in November, the allegation. November '73. We are talking about an arrest that occurred six months later.

MR. FISHER: At that point he is held for a couple of days. As I stated yesterday, Mr. Fried --

MR. FRIED: Without any allegation of mistreatment.

MR. FISHER: That is not true. He was handcuffed to a chair for two days.

THE COURT: I may have missed that argument, but

MR. FRIED: In other words, the position --

THE COURT: It won't do us any harm to go into it thoroughly and even take irrelevant material. As I say, even though there have been other hearings, and as I have been advised, there has been nothing decided by our Court of Appeals and so we might as well have a broader hearing on the issues rather than a narrow one. The only thing I object to is going into a pre-motion for a new trial discovery examination. That's what I object to.

MR. FRIED: But --

THE COURT: All right.

MR. FRIED: I would like to make one other statement. And that is, I have just learned that there is a cable that is classified confidential, and that is the report from Chile to the United States concerning the arrest of the defendant Baeza and the co-defendants in Chile. And I have asked somebody to contact Washington and see if we can have it de-classified. I have no authority --

THE COURT: Let me have a look at it in camera.

MR. FRIED: I have asked an Assistant to make a phone call. He is looking into that. And in the

meantime I will continue --

THE COURT: All right.

MR. FRIED: (Continuing) with my questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. FRIED:

Q Mr. Cecil, were you in court yesterday during -- at which time the defendant's attorney, Mr. Ivan Fisher, spoke for ten or fifteen minutes on the record with an offer of proof as to the allegations concerning mistreatment of the defendant Carlos Baeza in Santiago, Chile?

A Yes, I was.

(Continued on next page.)

Q Did you hear all those allegations?

A Yes.

Q Did you hear the allegations specifically with reference to your presence during the interrogation and torture -- of the alleged torture of the defendant Carlos Baeza?

A Yes.

Q Are those allegations true?

A No.

Q Agent Cecil, in November of 1973 did you request that the defendant Carlos Baeza be arrested by officials of the Chilean government?

A No.

Q To your knowledge, did any member of the -- any colleague of yours in Drug Enforcement Administration office in Santiago, Chile make such a request?

A No, no one did.

Q Was that arrest that occurred in fact in the middle of an ongoing investigation which led to the trial ofthis very case?

A Yes.

Q As a result of that arrest were there problems with the effectuation of the delivery of the cocaine in Canada?

A Yes.

Q Therefore, you yourself did not make any request and you were surprised when you learned of the arrest; is that right?

A Right.

Q At any time did you interrogate the defendant Carlos Baeza?

A No.

Q At any time did you witness him being interrogated?

A No, I didn't.

Q Again, specifically referring to November of 1973, at any time did you observe him mistreated?

A No.

Q Did you observe him at any time being in a position on his back with electrodes being applied to various portions of his body?

A No.

Q Did you at any time direct officials of the Chilean government to conduct such alleged misconduct?

A No, I didn't.

Q Now, you stated that --

THE COURT: Were you present when Mr. Baeza was turned over to agents of the New York office at Kennedy Airport?

THE WITNESS: Yes, your Honor.

THE COURT: For how long were you there when he was turned over to the agents?

THE WITNESS: Just long enough to clear Immigration and Customs.

THE COURT: You didn't hear him make any complaint, did you?

THE WITNESS: No, your Honor.

THE COURT: Go ahead.

Q Mr. Cecil, after he was arrested and you stated -- you testified that you saw him on November -- November 11, 1973, when was the next time that you yourself saw the defendant Carlos Baeza?

A May 4, 1974.

Q Between the time, November 11 -- November 9, 1973 and May 4, 1974, did you learn that he had been indicted in this district on January 11, 1974?

A Yes, I did.

Q Have you been advised any time prior to January 11, 1974 that he was the subject of formal criminal charges in the United STates?

A No.

Q At any time prior to January 11, 1974, did you advise the Chilean government that he was the subject of

any formal charges in this country?

A No.

Q So then was it after January 11, 1974 that you advised the Chilean authorities that he had been indicted in this district; is that correct?

A Right.

Q Did you then advise the Chilean government that if they could arrest him that the United STates Attorney for this District, or words to that effect, would prosecute him here?

A Yes.

Q Did you then have several occasions during which you would inquire with the Chilean government as to the status of the search for him?

A Yes.

Q Did a time come when you learned that Carlos Baeza had been arrested by the Chilean government?

A Yes.

Q Was that the time that you referred to earlier this morning, sometime -- or in April of 1974?

A Yes.

Q And did you then subsequently, as you testified, arrange for the Braniff International Airlines flight of this defendant to the United States?

A Yes.

Q When you saw him at the airport for the first time on May 4, 1974, he was in the custody of Chilean police officials; is that correct?

A I didn't hear you.

Q He was in the company of the Chilean police officials?

A At the airport?

Q Yes.

A Yes.

Q And are they the same police officials who accompanied you to the United STates?

A Among others, yes.

Q At any time during the flight to the United States, did you see him being mistreated?

A No.

Q At any time during his flight to the United States, was he interrogated?

A No.

Q At any time during his flight to the United States, did you direct the Chilean police officials to treat him in any particular -- to mistreat him?

A No.

THE COURT: Was Mr. Baeza and the others

permitted to converse among themselves during the plane ride?

THE WITNESS: Mr. Baeza was seated alongside of another defendant. They could converse freely.

THE COURT: Did they talk to any of the police officials while they were on the flight?

THE WITNESS: As I remember, Mr. Baeza was very quiet, sullen, subdued. Didn't say too much.

THE COURT: Were any orders given about, don't say anything, don't talk, by anyone, either the Chilean police or the American agents?

THE WITNESS: No.

Q Then when he arrived at John F. Kennedy Airport in New York on May 5, 1974 you yourself -- would you tell us what you did at that time?

A Agents from the New York office were waiting for the plane to come in. And as soon as we landed the prisoners were turned over to them as we got on the -- that little shuttle bus as I remember.

MR. FRIED: Your Honor, I have no further questions of this witness.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. FISHER:

Q Did you make an inquiry of the Chilean police with regard to whether or not Baeza had a criminal record?

A I think I did. Yes.

Q What were you told?

A I don't recall, Mr. Fisher.

Q You don't recall.

On the way -- during the plane -- did you converse with Mr. Baeza yourself on the plane, Flight 988?

A I said a few words to him.

Q What did you say to him?

A I don't really recall. It was a matter of -- you know, really small talk.

Q About how long did you speak to him?

A Just very briefly.

Q Significantly less than ten seconds, to quote a phrase?

A I would say it was probably longer than that.

Q Less than a minute?

A Probably.

Q What did he say to you?

A He just looked at me. Didn't say much of anything.

Q Did he ever refer on that plane to an incident in the Investigations Building involving you on November 9, 1973?

A No.

Q You testified in response to questions put to you by Mr. Fried that as a result of the arrest of Baeza and Osorio there were problems with the investigation that had been going on; isn't that right? That's what you just testified to?

A Yes.

Q So how do you know that?

A Sometime after the arrest we got some cables.

Q What did the cables say?

A That delivery was made, that the man hadn't been contacted.

Q But you didn't know that as of November 9th?

A No.

Q So far as you knew, then, the business could be going on as usual in that investigation, right?

A Could have been, yes.

MR. FISHER: No further questions.

THE COURT: Anything further?

MR. FRIED: Nothing further.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you, your Honor.

THE COURT: You are excused. And you can take the next plane back.

THE WITNESS: Thank you.

MR. FRIED: The only question is the report that I had just referred to your Honor. I can get it and bring it right down. But I don't have authority --

THE COURT: When is the next plane out, Mr. Cecil?

THE WITNESS: As I understand it now, we won't be able to leave until the morning.

THE COURT: So you will be here all day?

THE WITNESS: Yes.

THE COURT: Good.

(Witness excused.)

MR. FISHER: May the defendant be excused for a moment?

THE COURT: Yes. You are ready to proceed after that?

MR. FISHER: I have an application, your Honor.

THE COURT: All right. Suppose --

MR. FISHER: All right. I am ready to proceed after that.

THE COURT: All right. We will take a five-minute recess and then we will proceed.

(Recess taken.)

(At 12:20 p.m. the hearing resumed.)

THE COURT: Mr. Fisher, your next witness.

MR. FISHER: Carlos Baeza.

MR. FRIED: Your Honor, in the meantime may I mark this Government's Exhibit 7?

THE CLERK: Teletype marked Government's Exhibit 7 for identification in the hearing.

MR. FRIED: This document is classified Confidential, I am in the process of signing out about the decontrol of it at this point.

THE COURT: You shouldn't say that it is classified Confidential, that is just the thing that Mr. Fisher wants to see. You say anybody can look at it.

Just the first paragraph?

MR. FRIED: No, I believe the entire thing.

THE COURT: The whole thing?

MR. FRIED: The whole thing is relevant, at least it is relevant insofar as it is a report of what occurred.

THE COURT: Now when was it, it was May 4 that Baeza came into this country, so this concerns events much before?

MR. FRIED: That is correct, your Honor.

MR. FISHER: Of course Baeza had been arrested

in mid-April at the request of the United States, that has been agreed to.

THE COURT: I don't know, I don't know whether it is or not, but I certainly would like you to use every effort to have it declassified.

This probably is old stuff.

MR. FRIED: I'm sure that I can do it but I have to make one more phone call.

THE COURT: I would appreciate it.

MR. FRIED: I will have taken care of it by the end of the luncheon recess.

THE COURT: I am returning Government's Exhibit No. 7, subject to possible delivery to the defendant when it is declassified.

MR. FRIED: Thank you, your Honor.

(Document handed to Mr. Fried.)

MR. FISHER: We are ready to proceed, your Honor.

THE COURT: It isn't vital but I am sure that you can claim that it was.

MR. FISHER: May I proceed, your Honor?

THE COURT: Yes.

MR. FISHER: Carlos Baeza.

CARLOS ALEJANDOR BAEZA BAEZA,

having been duly sworn by the Clerk of the Court through the Interpreter, Mrs. Clancy, took the witness stand.

(All questions asked and answers given were then made through the Interpreter.)

DIRECT EXAMINATION

BY MR. FISHER:

Q Mr. Baeza, how old are you?

A 35 years old.

Q Do you have any problem at all understanding this interpreter?

A No, none.

Q Mr. Baeza, what schooling have you had?

A Seven years.

Q How old were you when you left school?

A Thirteen years old.

Q Mr. Baeza, do you recall a wedding party at 862 Islanda Street in November of 1973?

THE INTERPRETER: 1973?

MR. FISHER: Yes.

A Yes, my sister's wedding.

Q Were you arrested on that occasion?

A Yes.

Q Tell us the circumstances of your arrest.

A I was eating and the police with guns arrived and they arrested everybody at the party.

THE COURT: What day is this?

Q Was this November 8, 1973?

A It was my sister's wedding when I was arrested.

(continued next page)

DIRECT EXAMINATION

BY MR. FISHER: (Cont'd.)

Q Were the police wearing uniforms?

A All in civil clothes, all of them.

Q Were they Chileans, so far as you know?

A Apparently, yes, it seemed.

Q Who was arrested?

A All the men.

Q Which were who?

A My father, my brothers, Osorio --

Q Juan Jose Osorio?

A All the guests.

Q Juan Jose Osorio?

A Yes.

Q Also your uncle?

A Everybody, my uncle, the bridegroom, everybody.

Q How many people were arrested?

A More or less, some 13, 15 people.

Q Were any women arrested?

A No, none.

Q Where were you taken?

A They took us in two cars, in a wagon and a car, to investigations.

Q Prior to arriving at investigations, had you been told by any police officer what you were being arrested for?

A Nothing.

Q What happened at investigations?

A Well, they started asking for the people who had records.

Q Where were you at this time?

A In investigations.

Q Where in investigations, if you know?

A In the office of Mr. Poblete.

Q Who was Poblete?

A The office read, Directorate of Drugs.

Q Who was present in Poblete's office at the time you and others were being questioned about prior police records?

A A baldheaded man by the name of Valenzuela.

Q Is he a Chilean police officer?

A Yes.

Q Who else?

A And several other detectives.

Q Who appeared, if anyone, to be in charge amongst the police officers?

A It seemed to be Mr. Valenzuela, the only one.

Q You and your friends and family were questioned about prior criminal records. Did anyone answer in the affirmative?

A Only one had.

Q Who was that?

A Luis Ursua, an uncle of mine -- an uncle of mine. mine. A record that dated back 20 years ago, you see.

Q What happened to your uncle when he told the police that he had had a prior criminal record?

A They slapped him around.

Q By the way, had you ever been arrested by Chilean authorities prior to November 8, 1973?

A Never in my life.

Q What happened after your uncle was beaten?

A They had us kneel down with our hands -- they put us all like that in a line, in the room, kneeling for about a period of an hour. An hour, I think.

Q What time did you arrive at Investigations?

A I believe it must have been around 3:00 o'clock in the afternoon.

Q Was Enrique Munoz present when you arrived at Investigations Building?

A No.

Q Did you see him on that day?

A I was brought at around 5:00 o'clock in the afternoon -- 4:00. 5:00 o'clock, I don't remember exactly.

Q Brought by Chilean police into this room?

MR. FRIED: Objection, your Honor, as to the relevancy of what happened with another Chilean if the defendant was brought into the room. The purpose of this inquiry is what happened to this defendant.

THE COURT: Overruled. I will allow it.

A He was brought in together with two other people.

Q Other than being questioned about prior criminal records, did the Chilean police make any other inquiries of you or your group, on November 8, 1973?

A No.

Q How long did you stay in Poblete's office?

A We stayed until 6:00 o'clock in the morning.

Q Between 3:00 or 4:00 -- 3:00 o'clock when you arrived and 6:00 o'clock the following morning, were you fed?

A Nothing.

Q Were you given anything to drink?

A Nothing, only to the bathroom and we could drink water.

Q Were you handcuffed throughout that entire period?

A Yes, with the hands in back.

Q What happened at 6:00 o'clock in the morning?

A They took us to the dungeons, to the -- to the underground.

Q Cells?

A Yes, pigstys.

Q Describe the size of the cell?

A About half of that -- about like that, without nightlight, without any bathroom. We had to go to the bathroom in a jug.

MR. FISHER: Referring to the jury box.

Q Were there iron bars as a door or was it a solid door?

A It was a full door with like this more or less (indicating).

Q A slit?

A Just a hole like this.

Q A rectangular hole?

A Yes. Like this (indicating). About like this average.

MR. FISHER: Indicating an area of about three inches by six inches, your Honor. That would be

the rectangle.

Q How long were you in this cell?

A Until 8:00 o'clock, more or less.

Q Were you alone or with others in the cell?

A With two others.

Q Who?

A It was a guy, and I don't remember -- I don't remember well, I think it was my uncle.

Q Prior to 8:00 o'clock in the morning you still hadn't been fed, is that right?

A No, nothing.

Q Or given anything to drink?

A Water.

Q Up to this point in time were you permitted to phone family or lawyers?

A Nothing.

Q At 8:00 o'clock in the morning, what, if anything, happened?

A At around 8:30 they said the boss had arrived.

Q Who said that?

A Mr. Poblete. A policeman.

Q A policemen -- who said the boss had arrived?

A A policeman, one of the police, that their boss had arrived and that we had to go to the office.

Q Had you seen Poblete up to this point?

A No.

Q What happened after you were told that the boss had arrived?

A Poblete talked to Osorio in the office, in the private office. All he says is that we have to wait.

Q Where are you at this time?

A In the office -- in Poblete's office.

Q So you had been taken from the cells and into Poblete's office?

A Yes. There are two adjacent rooms, like two adjacent offices.

Q What happens after Poblete speaks with Osorio privately?

A Nothing, just that we have to wait.

Q And again, you are waiting in Poblete's office?

A Yes.

Q Does there come a time when someone else arrives in the office?

A No. We are all taken out at 10:30, all standing up.

Q Where are you brought?

A They put us there and two more people arrive.

Q Put "us" where at 10:30?

A Outside the office standing around.

Q What happens -- who arrives at 10:30?

A The man who is there, and another one.

MR. FISHER: Indicating Charles Cecil, for the record.

THE WITNESS: Yes.

Q And another?

A Another one. I remember he was wearing a brown coat.

Q Could you describe him for us in any greater detail, this second person?

A Darker colored than he is.

Q Referring to his skin?

A Yes, skin.

Q What happens after Mr. Cecil and another arrive?

A He goes to talk to Mr. Poblete.

Q You see this conversation, you see them talking?

A Yes, and he was talking in English with the other person that had arrived.

Q Cecil is speaking to the other person in English?

A Yes.

Q Are you able to hear the conversation between Poblete and Cecil?

A Not that, no.

Q What happens next?

A We're all put back into the office again and they take Osorio and Munoz out.

Q Who does?

A Two policemen.

Q Do Cecil and the other remain with you or do they leave?

A I didn't see them again.

Q Now, does there come a time when you were taken out of the room?

A Chilean policemen took me out.

Q About how long after Osorio and Munoz had been taken out?

A Some ten minutes.

Q Where are you taken?

A They take me downstairs underground.

Q What happened?

A Mr. Cecil is there also.

Q He also is present?

A There is three othe policemen down there. They

tell me I have to say everything.

Q Now, is Osorio present?

A Yes.

Q Is Munoz present?

A At that point Munoz way being taken on another stairs. I was coming down this way and he was going up with eyes covered and with handcuffs and blood was streaming around here (indicating the back of the leg). Apparently it came from the anus.

(Continued on next page.)

Q Were you hand-cuffed at this time?

A Yes. With the hands in back.

Q Who asked you to make a statement?

A Mr. Cecil.

Q In English -- in what language?

A In Spanish. Some strange thing. That I had to say everything.

Q What did he say to you?

A That I had to say everything.

Q Was that all that he said?

A Nothing else. They wanted to know whether I had a lab.

Q A lab?

A A laboratory.

Q Who wanted to know that?

A The police.

Q In general?

A Apparently so.

Q What else?

A And the cars, I believe.

Q Who asked you about the cars?

A I don't remember.

Q Were you asked about a trip? Were you asked any other questions?

A No. They just punched me in the stomach. Maybe the --

Q Who is the "they"?

A The police.

Q Did Mr. Cecil --

THE COURT: Did Mr. Cecil punch you in the stomach?

THE WITNESS: No.

THE COURT: How many times?

THE WITNESS: Some seven times.

Q Were you standing or in a chair or what?

A Standing up against the wall.

Q Were you punched before or after you were questioned?

A After.

Q After you had refused to answer?

A Yes.

Q All right. What happens after you're punched?

A They grabbed me. And they say, "Now you'll see what's good."

They covered my eyes and they had me walk some 30 steps.

Q Who said, "Now you'll see what's good"?

A One of those. Because they were all talking and

threatening.

Q Prior to being beaten and prior to be told, "Now you'll see what's good," did you see Cecil do anything?

A Yes. I saw him before.

Q What did he do?

A Nothing. He just made a gesture like that.

Q Like what?

A Something like that.

Q A nod of the head?

MR. FRIED: Objection.

THE COURT: It wasn't a nod of the head.

MR. FISHER: I'm sorry. I don't know what --

THE COURT: Seemed to be a shrug of the shoulder.

THE WITNESS: Yes, something like that.

Q When --

A Sort -- to indicate that they should continue.

MR. FRIED: I object to that last answer. It calls for a conclusion.

THE COURT: That's his interpretation if that's what he saw Mr. Cecil do. That wasn't an order to continue or suggest -- or a suggestion that they continue.

THE WITNESS: Yes, I don't say that.

Q When did Mr. Cecil make this gesture? Before or

after you were questioned?

A After I had refused to answer what I had been asked.

THE COURT: What question did they ask you? Give me the first question that they asked you.

THE WITNESS: That I had to tell everything.

THE COURT: What did he say if anything to that?

THE WITNESS: That -- what did they want to know?

THE COURT: What did they say after that?

THE WITNESS: That I had to say where the laboratory was.

THE COURT: What did you say to that?

THE WITNESS: I don't know anything about laboratories.

THE COURT: Did they punch you then?

THE WITNESS: Yes.

THE COURT: They asked you another question?

THE WITNESS: No. Nothing else. Only threats they hurled at me.

THE COURT: They punched you six times after you said you don't know anything about a laboratory?

THE WITNESS: Six, seven, eight.

THE COURT: Two men or more?

THE WITNESS: There were about three policemen.

THE COURT: Did they all punch you?

THE WITNESS: They all beat me.

THE COURT: All at the same time?

THE WITNESS: No, not at the same time.

THE COURT: At the time of the questioning when you said you didn't know where the laboratory is, is that when three policemen beat you, or did two beat you, or did one beat you?

THE WITNESS: Among all of them, they started to throw punches at me. And they said that now I was going to see what was good.

THE COURT: Did you fall to the ground?

THE WITNESS: How could I fall if they were holding me up with the punches?

THE COURT: They were holding you up and beating you?

THE WITNESS: I couldn't fall down. One punch followed the other. They had me cornered against the wall.

THE COURT: Go ahead, Mr. Fisher.

Q What happened after Mr. Cecil's gesture?

A They covered my eyes.

Q What happened then?

A They had me walk about 30 meters. I went down

some stairs.

Q What happened then?

A They took off the handcuffs.

Q Then what happened?

A They laid me down on a board like that.

Q What next?

A They tied me up. Arms and legs.

Q Was your back against the table?

A Yes. Laying down.

Q Then what happened?

A They ripped off my trousers.

Q Then what?

A They put a cable with current on my leg and my arm.

Q Was current put through your body?

A Yes.

Q Then what happened? Excuse me. How long was -- how long was the current put through your body on that occasion?

A Let's say two, three seconds.

Q All right. Then what happened?

A They told me that whenever I wanted to talk, I should raise a finger. And at that point they put a handkerchief tied around my mouth.

Q And then what?

A They applied a cable here on the arm, and another close to the bladder, and they gave me a strong shock now.

Q Was Poblette present?

A I heard talk only. My eyes were bandaged. But from the voice I could assure that it was he.

Q So you just told us that at one point there were four cables attached to you at one time, four electrodes?

A They were asking me who I had gone to drop off at the airport.

Q Who asked you that?

A I answered that I didn't know. The ones who were questioning.

Q Could you recognize the voice of the one who was asking that question?

A Yes. But it's very difficult to be able at that point to identify --

Q If you are able to identify the voice, tell us. If you can't, then don't.

A I would not be able to.

Q Now, the question I asked you before was, at what time were the four electrodes placed on you? All at the same time?

A About five minutes had gone by and somebody said, "This fucker has to get the four. Bring the other machine."

Q Then what happened?

A They put two cables here. One here.

Q Indicating each side of the head, the wrist. And what else?

A One, two here inside the bandage. One here on the arm, and one on the member.

Q Indicating the temples, each side.

The left wrist and the genitals?

A Yes.

Q Was electricity then put through your body?

A That was already a terrible shock. It was as though I could see a flashing light. I lifted up all the fingers now.

Q What happened after that?

A I lifted up the fingers. And they would remove the bandage around my mouth.

"What are you going to confess," they would say.

I don't know anything. I don't know what you are charging me with.

And they said, "You know where the laboratory is. You have to say it. And the cars. We have to know about the cars

you have."

To which I answered, I did not know anything about a laboratory, that I had no car.

They tied me up again. I think it was around the fourth time that the plate got loose. I have a metal plate. And when a shock, electric shock, came through, apparently I seemed to gag like.

Q What happened after that?

A There some person said, that has to be removed because he could swallow it.

THE COURT: We are going to suspend at this time for lunch and continue at 2 o'clock.

(Luncheon recess taken.)

March 12, 1975

2:05 o'clock P.M.

MR. FRIED: Your Honor, I have had an opportunity to have Government's Exhibit number 7 declassified. I hand a copy to Mr. Fisher.

What I have done is, so the Court can see, I have Xeroxed the text, but the beginning part of it which indicates the cable numbers, and the various recipients, which I believe are not relevant to this, I have extracted.

THE COURT: Mark the copy that you gave to Mr. Fisher as 7-A.

THE CLERK: So marked.

MR. FISHER: Your Honor, Victor Kaufman is a polygraph expert, and with the permission of the Court and the cooperation of the people at Worchester Street, will administer a polygraph examination this evening. It could not be done in the hour luncheon recess, your Honor.

Mr. Kaufman has indicated to me it would be helpful to him to hear the testimony, direct and cross, of Mr. Baeza in order to assist him in giving a proper test, and therefore I would request permission for Mr. Kaufman to sit at counsel table.

THE COURT: Very well.

MR. FRIED: The Government has no objection.

MR. FISHER: I would like to thank your Honor for helping me to see Mr. Baeza at West Street last night.

May I have one moment to read this?

THE COURT: Yes.

Are you interested in observing the test, Mr. Fried?

MR. FRIED: Your Honor, I have no wish to observe the test.

MR. FISHER: I offer Government's Exhibit number 7-A.

THE COURT: Any objection?

MR. FRIED: What is happening?

MR. FISHER: I am offering 7-A.

MR. FRIED: It has been marked for identification, I object to it going into evidence unless --

THE COURT: It may be marked for what it is worth.

MR. FRIED: Agent Cecil, your Honor, is in the building.

THE COURT: Mr. Fisher will want the Agent to come down.

MR. FISHER: What did you say?

THE COURT: I said that Mr. Fisher will want Agent

Cecil to be here for further cross-examination.

Is that right, Mr. Fisher?

MR. FISHER: Not necessarily, your Honor, but I need about two minutes more to go over 7-A.

THE CLERK: 7-A, previously marked for identification, now marked in evidence as Defendant's Exhibit B.

THE COURT: All right, let us continue.

C A R L O S A L E J A N D R O B A E Z A B A E Z A , having been previously Sworn by the Clerk of the Court, continued to testify as follows:

(Mrs. Libya Clancey, having been previously Sworn to act as Interpreter, continued to s(function, and Interpreted all questions asked and answers given by the witness.)

DIRECT EXAMINATION

BY MR. FISHER: (continued)

Q Mr. Baeza, you were telling us about a dental plate in your mouth coming loose as a result of the current being thrust through your body when we broke for lunch?

A Yes.

Q At this point in time, did you hear anyone say anything in your presence with regard to the dental plate?

A One of my arms was released, they removed the gag from around my mouth, and they said, It has to be taken out because he could swallow it.

Q Was Mr. Cecil present so far as you know at this

point in time?

A The voice seemed to me to be his.

Q Now what did you hear the voice that seemed to be Cecil's say?

A "Take it out, because he could swallow it."

Q Referring to the dental plate?

A Yes.

THE COURT: Did he say it in English or Spanish?

A In Spanish, I don't know English at all. The only thing I know how to say is "Yes," which I have learned here.

BY MR. FISHER:

Q Now, you had heard Mr. Cecil speak about a half hour before that, roughly speaking; is that right?

A No, less, a quarter of an hour.

THE COURT: Did he speak in perfect Spanish?

THE WITNESS: He only said that I had to say everything --

THE COURT: But did he speak in perfect Spanish?

THE WITNESS: Oh, with an accent, it seemed to me and accent sort.

THE COURT: With an American accent, of course?

THE WITNESS: I don't understand the language, the only thing I know is that I understood him.

BY MR. FISHER:

Q Prior to meeting Mr. Cecil on February 9, 1973, to your knowledge had you ever spoken with any American in Spanish?

MR. FRIED: Objection, your Honor.

THE COURT: I will allow it.

If he identifies as positively Mr. Cecil's, I want to know how he could do that.

MR. FRIED: There are about 160 accents in America, if we are talking about voices and accents in a voice --

THE COURT: You would recognize a southern accent, wouldn't you, a western accent?

MR. FRIED: I would, and I speak --

THE COURT: Let us see what he knows about it.

THE WITNESS: I haven't heard much.

THE COURT: Have you ever heard an American person speaking in Spanish?

THE WITNESS: Yes, in the jail, I have now heard them.

THE COURT: Can you recognize an American who speaks Spanish, through his accent?

THE WITNESS: No, but the manner of speech is strange, it is not as the Chileans speak.

BY MR. FISHER:

Q When you say the manner of speech, are you referring to the manner of speech as you recall it of Cecil?

A I can't say whether -- how many foreigners there were there, or whether there was another foreigner --

THE COURT: But it was clear to you --

THE WITNESS: (continuing) -- but from my point of view it was not the Chilean manner of speaking.

THE COURT: It was clear to you that it was a non-Chilean speaking; isn't that true?

A Yes.

Q How would Chileans pronounce LL?

THE COURT: Like in "long"?

MR. FISHER: No.

THE COURT: Go ahead.

A "Ye."

Q And how would , if you know, a Spanish person from Spain, pronounce that?

A The two letters together is "Ye," and your question was -- I don't know.

Q How about the word, "Ya," how would a Chilean pronounce that?

A "Ya"? The two, the two together? "Ja."

Q With a J sound?

THE COURT: You are telling him or asking him?

MR. FISHER: Asking him, your Honor.

THE COURT: Oh?

Go ahead.

I am satisfied that he is testifying that the voice he heard say, "Take the plate out or he'll swallow it was a non-Chilean, and Mr. Cecil was the only one, as far as we know, in that Police Station at that time.

All right. Now continue, Mr. Fisher.

MR. FISHER: Thank you, your Honor.

Q Now, what happened after the plate was removed?

A They continued to apply the current.

Q And after that, what?

A They asked me about the cars, that is, how many cars did I have.

Q Did there come a time -- Did there come a time when the current --

THE COURT: What did you say to that when they asked you how many cars did you have

THE WITNESS: That I didn't have a car, I have never registered a car in my name in Chile.

THE COURT: Did you hear Mr. Fisher when he outlined your claim say that you refused to answer?

THE WITNESS: Yes.

THE COURT: You heard my comment at the time, too, didn't you?

THE WITNESS: No.

THE COURT: Did Mr. Fisher talk to you about my comment on that?

THE WITNESS: I heard you very little during the trial because the Interpreter was falling asleep, you must know that.

THE COURT: I am talking about this hearing, the hearing yesterday when Mr. Fisher said --

THE WITNESS: I thought you were talking about the trial.

THE COURT: (continuing) -- when Mr. Fisher said you refused to answer, and I said that was incredible, I would even have lied to stop the punishment.

Did you hear me say that?

THE WITNESS: Yes.

THE COURT: Did you go over that with Mr. Fisher?

THE WITNESS: No.

THE COURT: Didn't Mr. Fisher say to you that the Judge thought that was incredible that you wouldn't have even given an answer while the electrodes were attached and the electricity was shooting through your body? Didn't you even talk to him about that?

THE WITNESS: No, I didn't talk about that.

THE COURT: That would have even been stranger. Go ahead, Mr. Fisher.

MR. FISHER: That is nevertheless the truth, your Honor.

THE COURT: All right, I believe you.

You said, when you made that statement, that you got this directly from the witness, didn't you?

MR. FISHER: I don't recall whether I did or I didn't say it, but that is the fact, your Honor.

THE COURT: All right.

To me, that is an inconsistent statement, when you, as his lawyer, told me that he said while he had the electrodes on him, with the electric on, and he in intense pain, that he refused to answer.

MR. FISHER: In that case, your Honor --

THE COURT: (Addressing the witness) No, I am not talking to you.

MR. FISHER: In that case, your Honor, I think it is only fair to give your Honor a fuller description of the circumstances.

The statement was obtained from Mr. Baeza with the help of my partner as an Interpreter the night before at West Street, I asked him what questions were

asked, and he would say the question, you know, and at this point in time, and he would give me the three questions, and I said, "Did you answer?" And he said, "Nada." He may have been referring to, your know, in general, in other words, he gave them no information worth having, not necessarily that he said nothing.

Your Honor, to be fair, that is what he said.

THE COURT: All right.

THE WITNESS: But I didn't say anything, I didn't have a car, what was I to say.

Q Now, did there come a time when the electrodes were removed?

A Yes.

Q And about how long had the electrodes been on your body?

A I would say I was there for more than -- about an hour, but the thing is that they would send the shock, and then they would stop, they leave -- They stopped for five minutes, then they give another shock, and within that period of time they step on my stomach, and they would speak vulgarities to me.

Q Now, you told us you were asked about the cars, about the airport, and about the plant during this period of interrogation: Were you asked anything else?

A And the laboratory.

Q Right.

Anything else besides that?

A Nothing else.

Q What happened after the electrodes were removed?

A They took off the bandage, they handcuffs, I fixed up my trousers as best I could, and they took me out, practically dragging me by the arms.

Q At the time that your blindfold was removed, were you able to see Charles Cecil?

A No.

THE COURT: When you said that they practically dragged you , are you saying that your physical condition was such that you couldn't stand by yourself.

THE WITNESS: No, it was just to firm up my feet slightly, but not entirely to hold me up.

THE COURT: Did you ever lose consciousness during any of that period?

THE WITNESS: No, but I was practically insane.

BY MR. FISHER:

Q You were carried up, out of this area, in the Investigations Building, to where?

A I was taken to the office where I was before.

Q And what happened, who was present when you were

returned there?

A All my relatives were there, there was Osorio, there was Munoz, all of them.

Q Approximately what part of the day are we now in, when you were returned to the Poblette office after the electrodes?

A I would say about 12:00, but I don't remember.

Q When you returned to Poblette's office, did you have a conversation with Poblette?

A Not very much, nothing, just -- He was -- He was rather speaking to Osorio.

Q Did Poblette ever tell you at any time who it was who had ordered the torture?

A Yes.

Q What did he say?

A That is was by orders of the Americans.

Q Where did he say it?

A Right there, he told me when we were just arriving, practically, and that they would have to torture my entire family.

THE COURT: That was by the order of the Americans, too?

THE WITNESS: That is what he said, "Nothing else, I am not going to talk or say anything."

MR. FRIED: Your Honor, I know this is a hearing, and for that reason I did not object, but this is all pure hearsay, and I will ask it be stricken from the record.

THE COURT: No, I will allow it.

Normally, an Agent cannot create an Agency by his statement, that is usually the principle, but I don't know whether it is true here. This is evidence here of what we might call a statement against the interest of the Chilean Government, and to first admit that the punishment was administered, and maybe the statement, if it was every made, that is, that it was at the orders of the American Government, that might be exculpating, and I will let it stand, anyway, although I don't know whether I will consider it.

How did it come to pass that this gentleman told you that it was the Americans that ordered it?

THE WITNESS: That is what he said there, and there was another Policeman, also.

THE COURT: Didn't you ask him why are you doing this?

THE WITNESS: I was unable to talk.

THE COURT: He just gratuitously said the Americans ordered this?

THE WITNESS: Yes.

THE COURT: Is that the way it happened?

THE WITNESS: Just like that, spontaneously.

THE COURT: Wasn't Mr. Cecil there at the time?

THE WITNESS: No.

THE COURT: Go ahead.

BY MR. FISHER:

Q Poblette had arrived on the morning of the 8th at -- the morning of the 9th, I'm sorry, at what time?

A Around 8:00, 8:15, more or less.

Q What time did Mr. Cecil arrive?

A I would say two more hours.

Q And you said that Poblette made the statement to you immediately upon seeing you on the morning of the 9th; is that right?

A No, Poblette told me after the torture, after they had already finished beating me up.

Q Where?

A When we were arriving at his office, and I was being brought, I heard him perfectly well.

Q Now, how much time did you then spend in Poblette's office?

A One hour, I believe -- No, I don't remember exactly all that, because after that I was taken down to the

dungeons.

Q Did you see Cecil again that day?

A No, I didn't see him no more.

Q And after that period of time that you were in Poblette's office, where were you taken?

A To a dungeon.

Q And who else, if anyone, was put in the dungeon with you?

A Munoz and Osorio.

Q And how long did the three of you stay there?

A The whole day.

Q Could you give us some idea of when it was that you were returned to the cell, in terms of time?

A At around 1:00 o'clock, something like that, 1:00, 2:00.

Q Were you fed that day?

A In the afternoon they brought us coffee in a thermos and a sandwich late, it was already late.

Q This is on the 9th?

A The same day that Cecil arrived.

Q Is that the first food that you received since your arrest the previous day?

A Yes.

Q Did you remain in your cell the remainder of that

day and that evening?

A Yes.

Q Did there come a time the following morning when you were removed from the cell?

A By two Agents?

Q Chileans?

A Yes.

Q Where were you taken?

A They put the handcuffs on me, they took me to the same place.

Q Referring to what as the same place?

A Where I had been taken the previous day.

Q The place where you had been tortured?

A Yes.

Q What happened then?

A They blindfolded me, I was again laid down, they told me I had to give them the laboratory.

Q Now, before being blindfolded, when --

THE COURT: Excuse me.

By the way, in the meantime, did you see the others that were being held downstairs?

MR. FISHER: He testified that Munoz and Osorio were in his cell, your Honor.

THE COURT: So when you returned to your cell

after the torture, did you see Osorio?

MR. FISHER: Osorio --

THE COURT: Osorio and Munoz?

THE WITNESS: We were together in the cell.

Q Did they tell you whether or not they were tortured in the same way?

THE WITNESS: Munoz had an anal hemorrhage, they had placed the cables in the anus, and he had hemorrhoids.

THE COURT: So they were tortured the same way?

THE WITNESS: Munoz has.

THE COURT: Not Mr. Osorio?

THE WITNESS: Not the others, no, nothing.

BY MR. FISHER:

Q Did Osorio tell you why he hadn't been tortured?

A I practically didn't speak much to him.

THE COURT: Didn't you tell him how you were tortured?

THE WITNESS: Sure.

THE COURT: Didn't he tell you whether or not he was tortured?

THE WITNESS: He told me that the electricity had not been applied to him, he only told me -- He only told me that it would be preferable if I talked, otherwise I would be killed.

THE COURT: Did Osorio tell you whether he gave them information?

THE WITNESS: No.

THE COURT: Did he tell you he didn't give them information?

THE WITNESS: He didn't tell me anything.

BY MR. FISHER:

Q Did you come to a conclusion as to whether or not Osorio had given information?

MR. FRIED: Objection as to form.

THE CCURT: Overruled, I will allow it.

A No.

Q Did Munoz tell you whether or not he gave them information?

A I had met Munoz two days prior, and one day at my place of business when he had come there.

THE COURT: Did he tell you whether he gave the police any information?

THE WITNESS: Why should I ask him such a thing if I didn't know him?

THE COURT: Go ahead, Mr. Fisher.

BY MR. FISHER:

Q Now, you were brought down to the torture room again the next morning, and you were blindfolded. Was the

blindfold placed on before or after you went to the toruure room?

A Before arriving, I figure about a minute before I was taken over there they placed the blindfold, and they had me walk the same steps, three, four steps, the same way.

Q On the morning of the 10th of November, this day you are now telling us about, did you see Charles Cecil?

A On the 10th, no, I didn't see Cecil again.

Q Did you hear a voice that sounded like Cecil's?

A No, I didn't see him any more.

Q Now, what happened in the torture room?

A They applied the current, that I had to tell them where the laboratory was. What could I say if I didn't know anything?

Q Were you asked again about the airport?

A No --

Q Were you asked --

A Not any more.

Q Were you asked again about the cars?

A No.

Q Were you -- You were asked --

THE COURT: They wanted to know whether any cars were registered in your name; is that right?

MR. FISHER: At what point in time, your Honor?

THE COURT: When?

THE WITNESS: The first time.

THE COURT: Yes.

THE WITNESS: They asked me what cars did I have, and I didn't have a car.

ls (continued on next page.)

THE COURT: They couldn't find that out at the Bureau of Motor Vehicles, could they?

MR. FISHER: Objection. Calling for a conclusion, your Honor.

THE COURT: I am thinking out loud. Withdrawn.

Mr. FISHER: Argumentative.

THE COURT: I can't imagine police being so stupid as to apply torture to find out whether he owned cars.

MR. FISHER: Well, that was --

THE COURT: Don't they have a Bureau of Motor Vehicles down there? Even a policeman would know that.

MR. FISHER: That was not the only question asked, your Honor.

THE COURT: I know it wasn't the only question asked. It's like telling me if you have title to the house you live in. Go to the Register. He'll tell you. Why do they have to go through these complicated methods of torture to find out what they could find out in the record room.

MR. FISHER: They weren't interested, I submit, in the registry. They wanted to know cars other than his car were actually his.

THE COURT: Oh.

MR. FISHER: And you recall, your Honor, that there was testimony in the trial itself with regard to a Mercedes. I think on one occasion another car and another car.

THE COURT: The Mercedes wasn't in his name?

MR. FISHER: I don't recall. I don't believe it was, your Honor.

THE COURT: Did they suspect whose name it was in?

MR. FISHER: I believe --

THE COURT: Could they go to the Motor Vehicle Bureau and see if it was in any other fellow's name?

MR. FISHER: I believe that was information given to the United States Government through Carlos Munoz.

THE COURT: You take a registration number down. And I assume their records aren't any different than ours. And you go down and find out who owns the car that he is driving.

MR. FISHER: Your Honor, that information was given to the Government by Carlos Munoz, according to Cecil, if you believe the testimony. They didn't give any information beyond a --

THE COURT: You know, I think he was cuffed

around a little bit. But some of this stuff is just incredible.

MR. FISHER: Your Honor, I think it is a question, you know, in a slew of others. Well, two others. How was --

THE COURT: You know what the trouble is? The trouble is that Toscanino came down first. And now he reads Toscanino in the Spanish translation. That's the trouble.

Go ahead.

Mr. Toscanino wasn't that fortunate.

MR. FISHER: Suspicious man, your Honor.

THE COURT: The Court of Appeals decided it. Now Mr. Baeza comes in later and reads the case.

MR. FISHER: Your Honor, I think one thing is clear. I would be prepared to offer the report from the United Nations. Torture is not at all uncommon. Not at all uncommon. The real question is whether or not --

THE COURT: Now, look, I say it is not beyond belief that he was tortured. The question is how. The dramatic way in which he described it seems to come from somebody's description. I have seen it on television. I have seen it in the movies.

MR. FISHER: Your Honor --

THE COURT: Being dragged by policemen because he couldn't stand on his feet. Just to find out whether he owned any cars or whether he had any cars. Any automobile.

MR. FISHER: No, your Honor.

THE COURT: And the laboratory. Where is the laboratory.

MR. FISHER: I think that is a fairly significant question.

THE COURT: Sure.

MR. FISHER: Where is the cocaine plant?

THE COURT: Well --

MR. FISHER: I think another significant --

THE COURT: That is possible, Mr. Fisher. But I am assuming that the police have average intelligence. If they have arrested him on the 9th, I would assume that his cohorts would know that he was arrested. And from what I know about laboratories, they can be moved in about 20 minutes.

If they were torturing him to have him identify the identity of individuals in a particular deal, I can understand that. That is a deal already set up, and that's to take place. And he could give valuable

information.

The place of a laboratory. What is a laboratory? His laboratory was described during the trial. It seems to be some piece of cloth out in the lawn where the cocaine was dried. That was the lab.

MR. FISHER: No, Your Honor. The lab testimony came from Valenzuela, if you recall.

THE COURT: I know.

MR. FISHER: Apparently it is a totally different operation.

THE COURT: He said he had four or five or six. That's what the witness said. Maybe even more.

MR. FISHER: Your Honor --

THE COURT: How much trouble is it to move a lab?

MR. FISHER: Your Honor will recall that when I made my offer of proof I left a particular thing out. I am inclined to ask the witness about that now. If I could have a -- if I could have the assurance of the Court that in the event of a retrial, the -- that that testimony could not be used on the Government's direct case --

THE COURT: I don't know that I can make that declaration and give any kind of immunity. The Attorney

General is the one who gives immunity.

MR. FISHER: I am not talking about immunity. I don't believe it is a crime against the laws of the United States.

THE COURT: Use immunity, too.

MR. FISHER: Your Honor, I am not talking about immunity. It was not a crime committed in the United States, in furtherance -- well, conceivably it could be argued that it was in furtherance of the conspiracy.

THE COURT: I don't know the extent to which I may preclude testimony from any retrial. And so I am not going to make any such ruling. In my humble opinion, this could not be used unless he takes the stand.

MR. FISHER: That's all I care about.

THE COURT: You know the law as well as I do. That's my belief. I won't allow it in a trial before me. If it is reversed the trial won't be before me.

Q Did there come a time when you and police officers conferred with regard to the payment of money to police officers?

A Yes.

Q And was an agreement reached to pay these police officers in order to terminate the torture?

A Yes.

Q What was the amount of money agreed upon?

A $10,000.

Q And when was the agreement made?

A The third day.

Q What money if any was paid?

A I don't know. But it was said that half had been given. Munoz then was able to leave. He was dropped off at the airport. I then received food and everything. And blankets. We were both there. Blankets and food.

Q You weren't tortured again during November; isn't that right?

A Not again. Nobody else touched me.

Q So on the 13th you advised payment had been made to the Chilean Police and were you transferred?

A To the jail.

Q To a different jail?

A Yes. Across the street.

Q From the one -- from the Investigations Building?

A Yes.

Q And how long did you remain in jail across the street from the Investigations Building?

A They threw us in there with all the rest of the prisoners. Two hours later they called us from the court.

Q And you were brought to see whom?

A To a clerk. To see a clerk. And they took a statement.

Q Did you at that point in time complain about -- withdraw complaint.

Did you at that point in time say you have been tortured?

A The clerk said that he had charges for false documents, which was a statement of mine. I had only signed a paper on the side in blank. I did not know what I was being charged with.

Q Did you mention being tortured to the notary?

A Yes.

Q Thereafter were you called before the court again?

A The third day.

Q What happened on that occasion?

A The policemen were there.

Q What happened?

A They asked me if they were the ones who had beaten me and I said, no.

Q Was that the truth?

A No. I was afraid of being beaten again by them.

Q Did there come a time when you were released from the jail?

A The fifth day.

Q The fifth day in the public jail?

A On the 18th.

Q Did there come a time in April of 1974 when you were arrested again?

A In Valparaiso.

Q At what time?

A At 4 o'clock in the morning.

Q Where were you?

A At a man's house.

Q How many men arrested you?

A There were four.

Q Were they --

A With machine guns.

Q Were you handcuffed at that time?

A I was laying down. I got dressed. My wife was with me. And they took me.

Q What about your wife?

A She remained there at the house.

Q What happened after you were taken to the car?

A They put me into a white Impala. There was a man wrapped up in a blanket.

Q Where?

A Completely covered up. In the back seat. In

the middle.

Q On the seat or on the floor?

A No, on the floor.

Q Where were you taken?

A To Santiago.

Q To what kind of a place?

A To a police station.

Q Do you know where? Which one it was?

A No. I know it's on Republica Street.

THE INTERPRETER: R-e-b-l-i-c-a.

THE WITNESS: They put me into a dungeon underground.

Q How long did you remain there? What time did you arrive there approximately?

A Around six more or less in the morning.

Q How long did you remain in the cell in this first police station on Republica Street?

A I would say the whole day practically.

Q Were you fed?

A No.

Q Were you given liquid of any kind?

THE INTERPRETER: What?

MR. FISHER: I'm sorry.

Q Were you given liquids of any kind?

A Nothing.

Q What happened after -- what happened on the following day? Were you interrogated?

MR. FISHER: I am sorry.

Q How long did you remain in this cell?

A From the time I arrived until another policeman came looking for me.

Q How long a period of time was that?

A I believe at around 7 o'clock in the evening.

Q And what happened at that time?

A They threw me into a car and they took me to another police station.

Q Was this police station the second police station? Do you recall on what street the second police station was?

A I don't remember.

Q Does the name Rathernos refresh your recollection?

A That was the third police station. The police station on Rathernos Street was the third one.

Q Now, what happened at this second police station

A Nothing. Nobody asked me anything. I was in a dungeon only.

Q Were you given food at this second police statio

or liquids?

A No. I slept there. The following day at around 12 or 1 they came to pick me up. The same policemen who had brought me there.

Q And what happened?

A They took me to the first police station on Wathernos Street.

Q When you say the first police station, you mean the first precinct or the first station? Not the first police station you have been taken to?

A No. The police station I am referring to is the first one.

Q But you are not saying that this third police station was the one you have been to first?

A No.

Q All right. What happened at this third police station?

A The police station is like this. And in front there is a large corridor with a bench. And I was handcuffed to a chair next to a window with iron bars.

Q Did anyone arrive?

A Not on that day.

Q How long did you remain handcuffed?

A For two days.

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Q Were you allowed to go to the bathroom during that period?

A Yes.

Q Other than going to the bathroom, were you ever permitted to be free of being handcuffed to that chair?

A Handcuffed always. Anywhere they took me, I was handcuffed.

Q Now, what happened the following day?

A On the fourth day a man arrived dressed in civil clothes asking -- and there were two other prisoners there. And he was asking about Carlos Baeza.

Q What happened?

A Shortly thereafter, he came to where the prisoners were. And he asked one of them what his name was. Then he asked me my name. And apparently there was a big argument then. They had arrested me under a different name.

Q Do you know the name that they had arrested you under?

A Juan Donoso Fuentes or something like that.

Q At the time of your arrest or at any time subsequent thereto, did you ever told any Chilean police officers that that Fuentes name was your name?

A No.

Q Had you been bearing any identification in that

name at the time of your arrest?

A I had my identity papers with my own name, Carlos Baeza. I had my identity card.

Q After the visit from this inspector, what happened?

A I was questioned by him.

Q What did he ask you?

A My name, whether I was married, and how many children I had, what time I had been arrested, whether I had been fed. To which I answered that I had not eaten for four days. And after that the captain came in from the police station.

(Continued on next page.)

Q Did the Inspector tell you why he had come?

MR. FRIED: I object to that as hearsay.

THE COURT: He told me that my mother had registered a writ.

Q What happened after your conversation with the Inspector?

A That there had been charges against the Captain that had been taken to the Supreme Court.

Q This is what happened after the Inspector left?

A The Inspector told me that I had to go to a trial for the ones who had me there.

Q Now, were you taken from this Police Station subsequent to your conversation with the Inspector?

A About an hour later the same Policeman came back again. They had me register with my own name and sign a release paper. And they took me in a little Citrone car to a different Police Station.

Q In this car, were you allowed to sit on the seat?

A On the floor.

Q At their direction?

A Yes.

Q Where were you taken this time?

A To the Ninth Precinct.

Q What happened there?

A They took my information there.

Q And then what?

A They put me into a dungeon.

Q Approximately -- What day are we talking about now in terms -- How many days after your arrest are we now talking about?

A Four days and hours, you could say.

Q Okay.

Now, what happened after being placed in the cell in the Ninth Precinct?

A About two hours later two Policemen came, dressed in civilian clothes.

Q And what happened?

A They called me. I went outside. They handcuffed me with the hands in back. They blindfolded me. And they had me cross a field that you can see from the cells outside.

Q Then what happened?

A Apparently they put me into a room. And they punched me a few punches in the stomach. And they told me, "So you're complaining that you haven't eaten for four days?"

After that, they put -- They laid me down on something like a cot, a metal cot. Always my hands were handcuffed in back. And they tied me here and the feet.

Q What did they do?

A They continued to beat me in the stomach. I was blindfolded. Then they started holding my nose, and they put excrement. I was choking like that when I was swallowing it. And then I started vomiting. That must have lasted some ten minutes. They were angry on account of the charges against the Captain.

Q Were you taken back to your original cell then?

A No. After that they released me. And apparently they hit me like this with the hands on the ear. I lost all control. When I recovered consciousness I was in a cell.

Q What happened after you woke up?

A An Officer came by who apparently gave the orders around in the Police Station. And he took me out because -- He took me out to wash me, because in the cell there was no water or anything. And he fed me.

Q How long did you remain at that jail?

A I would say through that night. And another day. I don't know. I don't really remember any more.

Q Did there come a time when you were placed in a military convoy?

A Yes.

Q Was this from this jail you just described?

A From the Police Station. We went to another Police Station. And Choy got on there. He had a suitcase with

him.

Q Was this Carlos Choy?

A Carlos Choy.

Q Is this the Carlos -- Is this the same man who later went to the United States on the Braniff Airlines flight?

A Yes.

Q Then what?

A We went to a place where they had political prisoners.

Q Is that known as the Stadium?

A The Chilean Stadium.

Q And then where -- What happened? I am sorry. What happened at the Stadium?

A Dabed got on there.

Q Jorge Dabed?

A Jorge Dabed.

Q And Dabed and Lazo ultimately were on the airline flight to New York with you?

A When we were coming. Yes.

Q What happened after -- What happened after Dabed and Lazo were picked up?

A We were taken to Val Paraiso again.

Q To a particular building there?

A First it seemed that the Policemen were getting

some information through the walkie-talkie. And they took us up an upgrade, to a mountain, to a military fortress.

Q Do you know the name of that?

A Palacio de la Reiza.

Q Did this have another name?

A Apparently they call it Teja Green Tile, because it was a typical place where people were tortured in those days.

Q What happened after driving up to Deja Verde.

A They didn't take us into the prison.

Q What happened there?

A They took us into the Intendencia, which is like the reception area.

Q What is the Intendencia?

A It is the Department of Interior.

Q What happened there?

A They put us, each one, in a corner, with arms like this, looking to the wall.

Q How long did you remain in this room in the Intendencia?

A They were calling us there to make statements, one at a time. I was questioned by the Naval Prosecutor for firearms, contraband and narcotics.

Q What specifically were you asked about drugs?

A What did I know about drugs? I said I didn't know anything. That I had never used them. And as to guns and firearms. I have never used firearms.

Q What happened after you were -- after you gave these statements?

A We had a problem them there, because Lazo came in to make his statement. And we heard a shot. And apparently he escaped. And therefore he finished very quickly with us.

Q What happened after the incident you just described, after hearing the shot?

A Nothing. Everybody in their own corner. Well, nobody could talk or anything.

Q Did there come a time when you left the room in the Intendencia?

A I was taken to the jail in ValParaiso. The four of us were taken.

Q All right. About what time?

A I would say at around 4:00.

(continued on next page.)

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1 PM

Q And how long did you remain in that jail?

A We slept there. The following day they had received a telephone call, and they left us incommunicado, all of us.

Q And how long did you remain incommunicado in this jail?

A Seven days.

Q Would that be until roughly April 30th, thereabouts?

A I think so, the 30th, or -- Yes, the 30th, sure.

Q Now, during this period of incommunicado, -- What does that mean, what is meant by that?

A Incommunicado is to be in a cell where you can't talk to anybody, you receive a plateful of food, you can't lay down, you can't watch or anything, or talk to anybody.

Q To your knowledge, were Cristain and Jorge Alvea also there incarcerated?

A They were there, but they were not incommunicado.

Q Did there come a time when you were released into the general population of the prison?

A The four were released from their incommunicado state at the same time.

Q And taken where?

A To the general prison population --

Q Did there come a time --

A (continuing) -- to talk freely.

Q Did there come a time when you were taken from this jail.

A A request came that we had to go to this Intendencia with all of our personal effects.

Q Did you and the others leave on that occasion?

A There was myself, after me and the Alvear brothers, there were seven of us, they came to pick us up in a Policeman's van, they had us sit down in the middle, on the floor, they were guarding us with machineguns.

Q Where was Lazo and Dabed -- Were they also there?

A All of them.

Q Were you then brought to Santiago?

A They took us to Intendencia.

Q Did you sign a paper?

A Statements were taken from the Alvear brothers, and they were released.

We were made to sign a paper, and they turned us over to Policemen dressed in civilian clothes who had two handcuffs, and they handcuffed us with two, Dabed was handcuffed to me, and Lazo was not handcuffed, they put his finger like this (indicating), and they tightened it (indicating).

Q Did you get to see this paper that you signed,

did you get to read it?

A I did not.

Q Did all five of you sign one paper, or five separate papers?

A We all signed the same document.

Q Do you know if any one of the others read the document?

A Yes.

Q Were you ever told what the contents of the document were?

MR. FRIED: I object to the hearsay.

A It said that we had to be placed --

THE COURT: It is hearsay, but I will allow it.

A It said that we had to be placed at the pisposal of the Department of the Interior, I think they said under Law 460 something.

THE COURT: That is the Department of the Interior of Chile?

THE WITNESS: That is what I think it said.

BY MR. FISHER:

Q Where were you taken from there?

A There a problem arose because Lazo started complaining his -- his finger was becoming ill. They pushed us over, and put us into a Patrol Car, and we were taken to Santiago.

Q Do you recall what time, approximately, you ar-

rived at Santiago?

A We stopped on the way.

Q For what?

A Apparently the Policeman wanted to apply the escape law to Lazo, and we begged that they not do anything to him.

Q When you say "apparently," on what basis do you make that statement?

A In that they told him, "Get off, get off now, and you will see."

And I said, "You are going to run."

That was the common thing. Whoever ran was killed.

Q Did you arrive in Santiago, the five of you?

A The five of us arrived in Santiago.

Q To what kind of a place were you brought?

A They brought us to a Police Station, and they placed us in a very small room in which only two could lay down on the floor, and three had to remain standing up.

Q How long did you remain there?

A Until, until they came to pick us up to take us to the airport.

Q Is this the next morning?

A No, I believe it must have been an hour or so,

an hour before we got to the airport.

Q On the way to the airport, did you pick up, or was someone else forced to join you?

A No, because we were guarded by cars, and there were other Policemen who were guarding us with machineguns.

Q Did there come a time when you saw Sergio Poblette?

A No, Sergio Poblette traveled with us to the airport, when we were on the way to the airport, we went by the Chilean Stadium to pick him up.

Q When you arrived at the airport, tell us what happened?

A Upon arrival to the airport, there is a Police Station before arriving at the airport, and they took us out there, one at a time, with me, in my case, there was a doctor, and he took my blood pressure, and he gave me two pills.

Q Was this a Chilean doctor?

A The man was at the head of the line, I don't know whether he was Chilean or not. He just moved his head because we were complaining.

Q In other words, there was no -- he didn't speak to you?

A He just examined us, and the pills.

Q What was the content of the examination?

A And to continue on.

Q Excuse me, what was the content of this examination?

A Nothing, just that.

Q Just what?

A He placed -- He took the blood pressure, just like that, and he gave me two pills.

Q That was all?

A That was all.

Q Did you see him making any notes, or writing anything on any paper?

A No, I didn't see anything like that, because he just did that, and into the van right away.

Q What happened after getting back into the van?

A They put the wagon all the way into the strip, and there, with the back of the firearms, they hit us, there were two policemen pointing their guns at us, and they said, Any slight trouble, you will end your days here.

Q What happened then?

A Mr. Cecil was there. And they started arranging us, two at a time, to each seat, two Policemen, two, two Policemen.

Q You just referred again to Mr. Cecil.

Is this the first time, this time at the airport, that you had seen or heard Mr. Cecil since November 9th?

A Yes, the first time since November 9th.

Q The name of this airport is Pudahuel, correct?

A Yes.

Q Now, what happened after you saw Mr. Cecil?

A After the plane took off, I asked him if I was going to be beaten there also, and he said, You relax, that nobody was going to touch me here.

Q Where did you say this to Mr. Cecil?

A He was trying to talk to all the prisoners, like that, giving explanations.

Q Where was this?

A In the plane, in the plane already.

Q Already you were in the plane?

A Yes.

Q You saw Mr. Cecil first on May 4th, the day you left for the United States, in the airport; is that right?

A On May 4th, it was at the airport.

Q Then you saw him again in the plane?

A In the plane.

Q Were you attended to by a doctor in the plane?

A No, nothing.

Q Were you handcuffed in the plane?

A Yes.

Q In what manner?

A Like this (indicating), in the middle, I was with Lazo.

Q At any time, did any Chilean authority tell you that you were being expelled?

A (The witness indicated in the negative.)

Q At this time --

MR. FISHER: I am sorry, ask him to answer orally, please.

A No, nobody told me that I was being expelled, only that I had to be brought to the United States.

Q Now, when were you told that, and by whom?

A That was told to me in the Police Station, we were leaving, they told the four of us that we were going to be brought to the United States, there were six, there were six of us, five of us were there, and then we went by to pick up Poblette, he knew that they were coming here, because I believe that had been published in the newspapers.

Q Now, had you at any point, by any Chilean authority, been given an opportunity to go to any place other than where you were brought, which was namely to flight 988, Braniff Airlines?

A Nothing, what were they going to permit me?

Q And you sit here now, were you ever convicted in a Chilean Court of any crime?

A I have never been convicted to this day.

MR. FISHER: No further questions.

THE COURT: Are you ready to proceed, Mr. Fried?

MR. FRIED: Yes, your Honor.

CROSS EXAMINATION

BY MR. FRIED:

Q Mr. Baeza, do you recall when you arrived in the United States?

A Yes.

Q Can you tell us what happened upon your arrival at Kennedy Airport?

A There was nobody there, it seems at the entrance Policemen took me, this was whom I saw just before with some papers, and then I was taken --

MR. FRIED: I would like the record to indicate--

A (continuing) -- to what seemed to be a jail.

MR. FRIED: I think, Mr. Fisher, that he is referring to Special Agent Igor Nowozeniuk.

Q And were you then taken to the West Street jail, the Federal House of Detention in New York City?

A No, I was in a place where they were taking pictures, fingerprints.

Q In other words, you were processed by the Drug Enforcement Administration, where you were fingerprinted and

photographed; is that correct?

A I didn't know who, I have never been here, how can I know?

Q Then, if I may lead, on May 5, 1974, which was the month after you arrived in the United States, did you have occasion to be physically examined at the West Street jail?

A Not on that day, nobody examined me.

Q Do you recall being examined on May 7th, which was a Monday, by a physician or a physician's assistant in the jail at West Street?

A On May 7th, yes, 7th or 8th, I would not be able to tell you exactly on what date, but a few days after I arrived, they were testing my blood.

Q Did you have any complaints at that time about your physical condition?

A I speak Spanish, and nobody gives any importance to any complaints you may have there.

Q Will you please answer the question that I am asking?

Did you complain at that time?

A I am answering you.

Q Did you complain at that time about the physical condition, answer the question yes or no.

A I have not talked to anybody about that.

Q Do you recall receiving medicine on that day from complaints that you had of sinusitis, and inflamed nasal passage?

A They just gave us tranquilizers to sleep.

Q Do you recall telling the person who was examining you that you had this inflamed nasal passage and condition on and off for approximately two years, and that you had received medicine for it in Chile?

A That turned up just recently.

Q Did you in fact have such a conversation with a medical examiner at the jail in West Street after your arrival in New York?

A There was a doctor there, a blond guy, but he didn't speak Spanish, he spoke English.

Q Did you complain to him that you had been physically mistreated in Chile?

A I would not have been able to explain anything to him, because he spoke English.

THE COURT: Did you tell him that you had a sinus condition in Chile, and had been treated for it?

THE WITNESS: No.

THE COURT: Were you ever treated for a sinus condition in Chile?

A Yes, yes, years back.

BY MR. FRIED:

Q Mr. Baeza, on that same day, do you recall being arraigned in this court house before a Judge on the charges for which you were indicted in this District?

A The only thing I heard was that they were setting a half a million dollars worth of bail.

Q Before they set the half million dollars worth of bail on you --

A You had me in the office first.

Q That is correct.

Withdrawn.

Before you appeared before a District Court Judge, were you in an office of the prosecutor?

A With you.

Q You were in my office; is that correct?

A I don't know whether it is your office, but I was with you.

Q And did I leave the room, and was there then an Assistant who remained with you who spoke to you by the name of James Watson?

A He only told me that I had to cooperate, that I would be in for fifteen years, and then they told me that I had to come before the Judge.

Q Was there an Agent of the Drug Enforcement Admin-

istration present at that time, an American Police Agent?

A The one who was here with a mustache.

Q And that is Agent Igor Nowozeniuk?

Was there also an Interpreter in the office?

A It seems to me there was a young lady.

Q Who translated from your Spanish into English, and from English into Spanish for you; is that correct?

A Yes.

Q Now, at any time, to either Mr. Watson, or the Federal Agent, did you complain of mistreatment by Chilean officials while you were incarcerated in South America?

A What could I tell them if the only --

THE COURT: The only question is, Did you?

A No, I didn't say anything to them.

Q You didn't tell Mr. Watson and Mr. Nowozeniuk that you had been mistreated in Chile when youwwere first arrested in November in Santiago, Chile?

A I told the Interpreter that I had been tortured very much in Chile, and she said it is incredible what these people are doing.

Q So at that time, you did in fact discuss that you had been mistreated by the Chilean authorities with Mr. Watson and this Federal Agent, is that correct?

THE INTERPRETER: May I have that question again,

please?

MR. FRIED: Yes.

Q At that time, Mr. Baeza, you did discuss the mistreatment in Chile by the Chilean officials with Mr. Watson and with the Federal Agent; is that correct?

A No, I didn't talk to them, she was offering me some coffee, and I explained to her. In that place where I was talking to her, I could see a building, and she said this is the biggest building, something like that, just a conversation I was having with her, but nothing formal, I didn't even have a lawyer.

Q Did you mention at any time during this period that you had been mistreated at the direction of American officials?

A No, I did not signify such a thing, I just said I had been tortured.

Q Did you indicate that during one of your alleged torture sessions there was an American Agent present?

A It was such a brief conversation that I didn't.

Q Will you answer the question yes or no?

A I can't answer the question with a yes or no, everything was so brief.

THE COURT: Tell us what --

A (continuing) I can't remember every minute.

THE COURT: Tell us what the brief conversation was, please.

THE WITNESS: She offered me some coffee, and she said that the Assistant wanted me to cooperate, because they were going to give me fifteen years.

I said I was very happy to be here, to have already undergone the tortures that I had undergone, and because I knew that they were not going to beat me up here.

At that point, they took me out, and they brought me before the Judge.

THE COURT: And nothing else was said about the tortures?

THE WITNESS: The Judge only asked me whether I had money for the bail.

I didn't have matches, how could I have money?

THE COURT: I'm talking about the conversation in Mr. Fried's office with Mr. Watson and the Interpreter was there.

Nothing else was said in your brief reference to the tortures down in Chile?

THE WITNESS: Nothing else.

THE COURT: Nothing?

Didn't you say something like, "Yes, I know they

do terrible things down there"?

THE WITNESS: Yes, she said how terrible it is what these people are doing.

THE COURT: She said that?

THE WITNESS: Yes, I think so.

THE COURT: So she was telling you about the terrible things: Right?

THE WITNESS: Sure, because I was chatting with her about it.

THE COURT: You did tell her something about it?

THE WITNESS: Sure.

THE COURT: What did you tell her about the tortures?

THE WITNESS: That I had been tortured in Chile, that they had put the current to me, that they had fed me feces, and then she said what terrible things these people do.

THE COURT: Did you tell all the things that happened to you that you testified to on the witness stand today?

THE WITNESS: It is as I am explaining it to you now, not as I related it to her, here I related it in detail.

THE COURT: Tell us in what detail you told it to

her.

MR. FISHER: Objection, your Honor, asked and answered twice.

THE COURT: Well, let us make it a third time, I would like to get it once fully.

Tell us everything you told her about the tortures, word-for-word, if you can.

MR. FISHER: At which point, your Honor, the conversation with the Interpreter?

THE COURT: Yes, with the Interpreter.

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THE WITNESS: This was on Monday, in the morning, because we arrived on Sunday, and they took us. -- Well, they took me --

THE COURT: Start at the time where the Interpreter is there, and you said to the Interpreter -- Now go ahead.

She gave you coffee, and you started telling her about the tortures.

THE WITNESS: She gave me coffee, and she said that the Assistant wanted me to cooperate.

I said that I had never been here, and --

THE COURT: Was she translating this in the meantime?

THE WITNESS: No, she speaks Spanish, why should she be translating.

THE COURT: This was just an informal talk?

THE WITNESS: I was just chatting with her, this was an informal conversation between she and I.

THE COURT: In the presence of Mr. Watson?

THE WITNESS: No.

THE COURT: All right.

Now tell us everything you said to her informally about the tortures, word-for-word, if you can.

THE WITNESS: She told me that they would hold me

fifteen years.

And I said I was very happy because in Chile I had been tortured, I had been made to eat feces.

And then she said that it was terrible what these people were doing, and that was all.

THE COURT: You didn't tell her about the beatings?

THE WITNESS: No, how could I explain all of that, it was just a few minutes.

THE COURT: You didn't tell her that Mr. Cecil was present when the Policemen struck you?

THE WITNESS: No.

THE COURT: All right, Mr. Fried.

CROSS EXAMINATION

BY MR. FRIED: (continued)

Q Mr. Baeza, at this time, you said Mr. Watson was not present?

A I don't know who Mr. Watson is.

Q Do you recall --

A The only one is the one I saw here before, I don't know whether that is Watson, or he has another name.

Q Was the man whom you saw here before present at this time?

A Also there was a blond one with green eyes.

Q A man?

A A man, yes, and he is the one that came down to set my bail.

Q After the bail was set, Mr. Baeza, you returned to jail.

Did you again see a doctor in West Street on or before May 31, 1974?

A Yes, they examined me there, a blood test, that is all.

Q Did you see a doctor approximately three weeks after the arraignment, and receive medicines for a problem you were having concerning constipation?

A I don't remember.

Q Did you at one time see a doctor in West Street concerning a problem that you were having with your teeth?

A I had a face ailment, I had headaches, and I was all swollen, and I explained this to them, but I was like that for twenty days.

Q You were ultimately taken to a hospital in New York, Bellevue Hospital, where they removed a cyst from your mouth or your gums?

A I was taken with Choy to a hospital, and they took X-rays there. Afterwards, I again went back, I was operated on. Apparently they took out some infection, they pulled

out a tooth, I was left with an infection, and I went back again. They gave me other pills, and it went away.

Q During this treatment, did you have occasion to speak to doctors and explain to them what your immediate problems were?

A To whom?

THE COURT: Didn't the doctors ask you a history of all past injuries, operations, diseases?

THE WITNESS: No, they just asked my name there, they took blood, and that was all.

THE COURT: They never asked you whether you were ever sick before?

THE WITNESS: No, nothing.

THE COURT: They never asked you if you were ever injured before?

THE WITNESS: No.

BY MR. FRIED:

Q At any time while you were being treated by physicians, either for the problem of your mouth, the infection, or on May 31st when you received the medicine for constipation, had you complained of mistreatment in South America?

A Yesterday, or the day before yesterday, the first person that I told this to was my lawyer, I told him everything I had lived through.

Q That was the first time you told this to your lawyer?

A I told him everything, of course I had talked to my associates how I had been beaten and everything, but only very superficially.

Q Who are these associates?

A The ones that are in West Street, the ones that were brought with me.

Q Among these associates, was there one individual named Jorge Dabed Sumar?

A I have talked to them here, yes, we are in the same cell.

Q Did you know that Jorge Dabed Sumar had made similar allegations and had a hearing on these allegations in the Southern District of New York?

A I have no idea.

Q You didn't know that he had been before the Judge on this same question?

A Well, he went to a trial.

Q Do you know whether or not he was before a Judge on the particular question of whether he was lawfully brought into the United States?

A I know that he had a trial, I don't know anything about his case.

Q You don't know anything about his case, yet you discussed your case with him; is that correct?

A Of course, that I had been beaten, he also told me that he had been beaten.

Q Did he tell you that he had his -- Do you know what the Toscanino case is?

A I have no idea.

Q No idea, never heard of the so-called word Toscanino?

A What is ntioned here in the court?

Q Do you know that Jorge Dabed in November of 1974 had his Toscanino motion denied by Judge Gagliardi?

A I have no idea.

Q You don't know that?

A No.

Q Do you know a man named Sergio Poblette?

A We traveled together.

Q Is he one of the associates that you discussed your beatings with in West Street?

A I haven't spoken to him, no, he is not a friend of mine.

THE COURT: Is he in the same cell?

THE WITNESS: No, he is not there.

THE COURT: He is not at West Street?

THE WITNESS: No, he was already sentenced, I think, to five years, and they take them to a different prison.

THE COURT: Before he was sentenced, did you see him at West Street?

THE WITNESS: I never talked to him.

THE COURT: Did you see him?

THE WITNESS: Yes, he was there.

THE COURT: All right, go ahead.

BY MR. FRIED:

Q Let me ask you, Mr. Baeza, who is the associate -- Who were your associates in West Street with whom you discussed your alleged beatings?

A With Lazo, with Dabed, Mellafe, that is all.

THE COURT: Do you suffer from headaches?

THE WITNESS: Yes.

THE COURT: And is it because of the electric shocks that you got while you were in jail in Chile?

THE WITNESS: Yes.

THE COURT: You told that to the Probation Officer, didn't you?

THE WITNESS: I told him I had strong pains, but afterwards I didn't talk with him.

THE COURT: Didn't you tell him it was because

of the electric shocks that you got in Chile?

THE WITNESS: I don't remember.

THE COURT: Well, you might be interested in what the Probation Report says, and it says that the defendant further stated he suffers from frequent headaches due to alleged electric shock administered to him while he was in jail in Chile.

Do you now remember telling that to the Probation Officer?

THE WITNESS: I don't remember that.

THE COURT: Did you ever tell that to any doctor that examined you?

THE WITNESS: I don't want to lie to you, if I don't remember having said that --

THE COURT: I only want you to tell me what you only remember.

THE WITNESS: I don't remember.

THE COURT: Did you ever complain of headaches while you were at West Street?

THE WITNESS: I always asked for pills, but while I asked, what I take most often is for the stomach, because after eating feces, I had constipation, I couldn't move my bowls.

THE COURT: Did you ever tell any doctor at West

Street, when you complained of headaches, that it was because of the electric shocks that you got in Chile?

THE WITNESS: I don't rmmember, I don't remember having spoken to the doctor.

THE COURT: All right.

BY MR. FRIED:

Q Mr. Baeza, did you know that Serio Poblette had also had a hearing of this nature into the method which he was expelled, in quotes, from Chile?

A I have not talked to this man, I don't converse with him, we don't even say hello.

Q Then you didn't know that that had been denied?

A What am I going to know, I have no idea, I didn't know about my own case, what was I to know?

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Q Now, concerning your associate, Mellafe, did you know that he had had a similar hearing before the Court in which he testified as to the means in which he was brought from Chile?

A He told me, but we have not ever discussed that. Because it's very simple. We all lived through it.

THE COURT: I think it's interesting to note the date of the decision in Toscanino, which was May 15, 1974.

Q Did you state before -- I am sure I am correct on this -- you had discussed your alleged mistreatment in Chile with your associate Lazo, Poblette, and Mellafe, now you are telling us that you didn't know that Mellafe made a similar accusation which was denied by a Judge in the Southern District of New York?

A Not about my case. Just that I had -- that I explained that I had undergone torture. I explained how -- They also know how they beat you up down there.

Q Did you discuss --

A I think these are news.

Q Did you discuss this with Sergio Lazo?

A I explained to him that I had been tortured.

Q Did you know that Jorge Dabed had just testified in this court house in a similar hearing that you are having

today?

A No. The only thing I know is that Lazo came two or three days ago to the Court.

Q You don't know that your associate, Lazo, Dabed, Mellafe, as well as other Chilean defendants who have been in West Street with you have made similar allegations, and have had hearings on these allegations in various courts in New York City?

A No. I have never been interested.

Q Do you know what Dabed's sentence was?

A Five years, I think.

Q Do you know the sentence of the other Chileans in the various courts in this city?

A I don't know. The only one I know if Mellafe. Dabed, who is there --

Q Do you know what Mellafe's sentence was?

A Five years.

Q Do you know whether or not Dabed has had a similar hearing that was denied by Judge Laguardia in the Southern District of New York?

A I have no idea.

Q You have no idea. Then my final question --

THE COURT: Mr. Fisher, may I know whether you represented any of these defendants? Mr. Fisher?

MR. FISHER: I heard the question, your Honor. At present, no.

THE COURT: I am talking about in these hearings.

MR. FISHER: I represented none of those defendants at the hearings.

Q You have been in West Street since May of 1974?

A Yes. All the time.

Q You have never heard, then, from any of the Chileans what the results have been as to these types of hearings that have been held in numerous cases in Federal Courts in the City?

A I have no idea. I already answered that about ten times.

Q Let me ask you another question. Have you ever heard the name Julio LaHunt?

A Julio LaHunt?

Q Yes.

A Yes.

Q Do you know who that is?

A He is a guy who is in jail.

Q Is he in West Street?

A Yes.

Q Is he on your floor?

A Yes. In the same block.

Q Do you know what nationality he is?

A Argentinian.

Q Do you know anything about him?

A No. He is very reserved.

Q Very reserved. Do you know whether or not there was a -- Withdrawn.

Have you ever spoken to him?

A No. Just basic. That's all. I practically don't converse. Besides, I hadn't seen my lawyer for a long time.

Q Were you aware of a so-called --

A He came to see me two days ago. Three.

Q Mr. Baeza, did you ever hear of a so-called LaHunt case which has some interest in these types of proceedings?

A I have no idea. The only thing I know is that he was kidnapped. Because that's what they call them. The kidnapped ones.

Q Who's they?

A Everybody talks about that. You ask, Where are you from, and he said, I was kidnapped.

Q Who is the "he" who said that?

A I don't say that. It's Mr. LaHunt who says so. It's generally spoken of among the inmates. That's what they

refer to, the kidnapped ones.

Q Do you know what happened to Mr. LaHunt in terms of this court house, whether he --

A What am I going to know about it? I am in jail. Am I to know what goes on here?

Q While you are in jail in West Street, Mr. Baeza, was a prisoner by the name of Francisco Toscanino with you?

A I have no idea. There are 300 people.

Q All right. Now, Mr. Baeza, you testified that you were asked about automobiles in South America by the Chileans when you were interrogated on November 8th and November 9th, 1973; is that correct?

A The questioning was on the 9th. Yes.

Q Did you own a car in Santiago?

A I never had a car in my name.

Q Did you have access to a car, control over a car in somebody else's name?

A I had friends who loaned me their cars.

Q Did you have access to friends who had a car and a chauffer?

A Yes. With car salesmen, too. I would take one out to sell it.

Q Were you a car salesman?

A No.

Q Then what do you mean you would take one out to sell?

A Because I am a businessman. I have always been a businessman. And I had a restaurant.

THE COURT: How much longer are you going to be?

THE WITNESS: It's normal. Not just a car salesman is able to sell a car.

MR. FRIED: I have two or three I think fairly short lines of questions that I wanted to go into. Perhaps fifteen minutes at the most.

THE COURT: Fifteen minutes?

MR. FRIED: At the most.

THE COURT: I assume you will have redirect?

MR. FISHER: Yes, your Honor.

THE COURT: All right.

We will take a brief recess on this, and I will take Lucchetti.

(Witness excused.)

(Recess taken.)

THE COURT: All right, we can proceed with Baeza.

MR. FRIED: Your Honor, I have just spoken to Mr. Fisher. Mr. Cecil is here. And since he is trying to make a late afternoon plane --

THE COURT: Do you want to ask him any questions?

MR. FISHER: Yes, your Honor.

THE COURT: All right.

MR. FRIED: We will take him out of turn.

THE COURT: All right.

C H A R L E S C E C I L, having been previously duly Sworn, testified further as follows:

MR. FRIED: Also, could we mark this as Government Exhibit 8, which is a copy of my notes concerning Carlos Baeza's medical record at West Street that I received on the telephone.

I have shown this to Mr. Fisher.

THE COURT: Any objection, Mr. Fisher? Mr. Baeza's medical report at West Street?

MR. FRIED: My notes of what I heard over the phone. I've shown this to Mr. Fisher.

MR. FISHER: I object to the admissibility of--

THE COURT: I would like to see the record.

MR. FRIED: I understand. I would like to just mark this for identification.

THE COURT: For identification.

MR. FRIED: Yes.

MR. FISHER: No objection.

THE CLERK: So marked as Government's Exhibit 8.

For identification at the hearing.

MR. FISHER: May I?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. FISHER:

Q I show you what has been marked as Defendant Exhibit B in evidence for this hearing, Mr. Cecil. Is that a teletype prepared by you on February 9, 1973?

A Yes, it is.

Q And does it state on the top that it was recieved in New York at 12:59 P.M. that date?

A Yes.

Q From your experience, what would -- What would it indicate in terms of the time that you actually prepared it?

A About three hours. Two to three hours.

Q So 12:59 being roughly 1:00 o'clock -- Oh, by the way, there is a time. Is there a time difference between Chile and New York in November?

A Yes, there is.

Q One hour, right?

A One hour.

Q So it were received in New York at 1:00 o'clock, it would have been transmitted at 11:00 o'clock; is that right?

A Chilean time, yes.

MR. FRIED: Mr. Fisher, I'm going to make it simple. What I have deleted -- One is 091904Z, November '73. My understanding of that is 9th of November, zool time, 1704. Is that correct?

THE WITNESS: Six hours difference.

MR. FISHER: What.

THE WITNESS: It woudd have gone out at 1104 in the morning.

MR. FISHER: We agree.

MR. FRIED: That's right. I wanted to make it clear.

MR. FISHER: That's refreshing.

Q Now, did you send this from your office?

A Yes, I did.

Q Was it necessary for you to be in your office to send it?

A Yes.

Q Would it be fair to state that this is the first thing you did upon returning to your office, sending this cable out?

A Probably.

Q Thompson was the name you used when you sent out cables?

A No. We used the State Department facility. Mr.

Thompson is the State Department Officer.

Q But these are your words, the words on 7-A?

A Yes.

Q All right. Now, in there you note, do you not, that in paragraph one, that on Jorge Munoz, upon his arrest, was found in possession of newspaper clippings from Toronto newspaper relating to the Royal Canadian Mounted Police seizure, right?

A Yes.

Q That seizure, of course, was the seizure in connection with the Baeza case, right?

A Yes.

Q So it immediately became apparent to you that Enrique Munoz might be involved in your Baeza investigation, right?

A That's correct.

Q Now, did you communicate that fact to any Chilean authority?

A No.

Q No. Did it occur to you at that point in time, by keeping Enrique Munoz incarcerated, the Chileans were knowingly or unknowingly interfering with your hopes for the volume deliveries in North America?

A Yes.

Q Did you make any telephonic communication at all with regard to any Chilean authority whatsoever in order to have Munoz, Enrique Munoz, released?

A No.

Q Do you know whether or not George Franguille did?

A I'm sure he didn't.

Q Why are you sure he didn't?

A Because we weren't going to tell the Chileans about the investigation.

Q This agreement had been reached prior to November 8th, not to say anything to the Chileans?

A Right.

Q What about after you learned all this? Did you sit down with Mr. Franquille and discuss the events of November 9th and what you learned?

A Not to any great extent, no.

Q Well, how do you know that Mr. Franquille had no communications with the Chilean authorities with regard to whether or not Munoz should be released?

A Well, I'm certain he didn't. I don't know for a fact that he didn't. But I am assured that he didn't.

Q Did he ever tell you he didn't?

A No.

Q Now, in paragraph four, you note, do you not, -- You state, do you not, that Baeza and Orsorio are, quotes, currently being questioned by Chilean Police, with the hope of making a laboratory seizure; is that right?

A Yes.

Q So you were told on the morning of February 9th of the nature of the interrogation of the Baeza and Orsorio; isn't that right?

A The Police made some mention of a laboratory. That was all.

Q You stated there that Baeza and Orsorio are currently being interrogated with regard to a laboratory; isn't that true?

A Yes.

Q Now, how did you know that?

A He told me.

Q Who told you?

A Lopez.

Q A Chilean Police Officer?

A Yes.

Q Told you that they were being interrogated, and told you what they were being interrogated about; isn't that right?

A Regarding a laboratory, yes.

Q And you told him that in case they found out anything, to please notify you; isn't that right?

A Yes.

Q Do you have any idea about the Chilean method of interrogating at the time you were having this conversation with Mr. Lopez?

A No.

Q None at all? It would have come as a complete shock to you ahat people under Chilean interrogation were being tortured? That would have been a shock to you, Mr. Cecil?

A It wouldn't have been a shock, no.

Q It wouldn't have been a surprise at all, would it?

A It would have been a surprise, but not a shock.

Q Hadn't you heard on numerous occasions allegations with regard to Chilean interrogation methods by the Chilean Police?

A I have read the articles in the New York Times.

Q Did Mr. Lopez tell you that they had already been questioned with regard to a laboratory on the morning of November 9th, when you were -- when you were questioning him, Mr. Lopez?

A No, he didn't.

(continued on next page.)

R2 fls

Q In other words, he told you they were about to be questioned about that; isn't that right?

A Yes.

Q And there was a discussion between you and Mr. Lopez about the search of Baeza's home; isn't that right?

A According to this, according to my recollection, the home hadn't been searched yet.

Q That is not the question, Mr. Cecil. The question is another one. Did you discuss with Mr. Lopez of the Chilean Police on the morning of November 9, 1973 the possibility of searching Baeza's home?

A Yes.

Q And Orsorio's home?

A Yes.

Q And you were assured that that would be done that day, right?

A Yes.

Q And you told them, if you find anything, let me know?

A Certainly.

Q And you told them, look, any documents that are found are very important to us; isn't that right?

A Certainly.

Q Did Mr. Lopez ask you why would these documents

be important to you?

A The Chilean Police had been aware for some time of the investigation of the activities of Mr. Osorio.

Q By whom?

A By our office.

Q As well as of Mr. Baeza; isn't that true?

A No. Not to the extent of Osorio.

Q But they knew about your interest in Baeza prior to February -- prior to November 8, 1973; isn't that true?

A As a result of an inquiry, I am sure they did.

Q You made an inquiry?

A Yes.

Q And in fact you had told them that he was in fact under some sort of investigation by your office; isn't that right?

A Well, it's normal to assume when an inquiry is made that that is the reason for the inquiry.

Q Did Mr. Lopez tell you that Mr. Osorio made a phone call from Munoz' house four days before to a girl?

A No.

Q Did you ever hear that prior to two days ago?

A No, I didn't.

MR. FISHER: May I have one moment, your Honor?

THE COURT: Go ahead.

Q Were you aware of a telephonic conversation between Carlos Munoz, your agent, and Osorio on November 8, 1973?

A Yes, I am.

Q And you knew roughly what the subject of that conversation was, right? That had been conveyed to you?

A I am not certain that I knew that at the time this cable was sent. It is possible. I don't think so.

Q Now then, prior to leaving this discussion with Mr. Lopez, prior to your leaving Mr. Lopez, you and he agreed, did you not, that the Chileans, Baeza and Osorio, would be held at least until you were notified to the contrary; isn't that right?

A I knew they would be held for five days.

Q You also knew that they -- you would have been notified before their release; isn't that right?

A Yes. That's what I thought at the time.

Q That was agreed between you and Lopez?

A Well, I told him to call me when they were released.

Q When and if they were released?

A Right.

Q And before they were released?

MR. FISHER: No further questions.

THE COURT: Anything further, Mr. Fried?

MR. FRIED: I have just two or three questions.

RECROSS-EXAMINATION

BY MR. FRIED:

Q Mr. Cecil, did you direct that the Chilean authorities conduct a search of the Baeza house or of the Osorio house?

A No, I did not.

Q Did you direct that the Chilean authorities conduct any interrogation of Osorio?

A No.

Q Of Baeza?

THE COURT: Did you suggest it?

THE WITNESS: No, your Honor.

THE COURT: Did you initiate it in any way?

THE WITNESS: No, your Honor.

MR. FRIED: I have no further questions.

MR. FISHER: Your Honor, before Mr. Cecil leaves, I would have inquired as to whether or not the houses were searched and whether or not any documents were relayed to Mr. Cecil. But in view of your Honor's ruling with regard to motions for a new trial and everything, it may not be immediately

germane on this issue -- I withdraw that. I think it is germane. But consistant with your Honor's previous rulings, I have not inquired.

THE COURT: Yes. If the conviction is affirmed, then we will bring Mr. Cecil back from Bogata, maybe, and give you the opportunity. We may work out a deal where you pay the expenses and do everything else.

MR. FISHER: I am just trying to comply with what I understand your Honor's ruling to be.

THE COURT: That's right. It is a hearing for one purpose, judicial challenge.

You may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: All right, Mr. Baeza.

C A R L O S B A E Z A, having been previously duly sworn, testified further as follows:

THE COURT: I am not going beyond five o'clock today.

MR. FRIED: Actually I am glad to hear that. I'm trying to get rid of this cold.

CROSS-EXAMINATION

BY MR. FRIED (Cont'd):

Q Mr. Baeza, did you have access to the use of an automobile in Santiago, Chile, in or about the latter part of 1973.

MR. FISHER: Objection, your Honor.

THE COURT: What does that have to do with this issue here? I have foreclosed Mr. Fisher. Why should you be given the right --

MR. FRIED: Well --

THE COURT: -- to firm up your case in the event of a retrial.

MR. FISHER: Well, I think, first of all, it is relevant on the credibility of this witness as he has testified.

THE COURT: Now, sustained.

MR. FRIED: And my second ground for going into this area is that the questions of automobiles have been --

THE COURT: I know.

MR. FRIED:: -- germane.

THE COURT: I get the picture on that. I might say to you that I just don't believe Mr. Baeza. Certainly on the question of automobiles that he would stand all that torture and not answer any que-tions about automobiles even if he had to

lie about it. I'd say I owned every fleet of automobiles in the world if they put those electrodes to my body and you would, too.

MR. FRIED: Well, the only other area of questioning I wanted to go into -- and I am anticipating that your Honor is going to foreclose it, would be to his own trafficking in narcotics in Chile at this time.

THE COURT: Yes. I don't think that is part of the case at all. I won't allow it.

MR. FRIED: I have no further questions.

REDIRECT EXAMINATION

BY MR. FISHER:

Q Mr. Baeza, upon arriving at West Street in May of 1974, were you placed in segregation?

A Yes.

Q How long were you in segregation?

A I don't know.

THE COURT: I don't know what Mr. Baeza's idea of segregation is, whether it is similar to mine at West Street. But I heard from prisoners and from the Warden that segregation means that they are all in one tank. It holds about twenty-five men. It isn't isolation.

Everybody is segregated at West Street. Nobody gets out. I mean they are in that building.

MR. FISHER: There are those that have access to the whole building.

THE COURT: Yes.

MR. FISHER: I am about to get into that.

THE COURT: I am talking about that. That's the tank. That's about twenty-five men. Maybe it's more.

MR. FISHER: Wait a minute.

THE WITNESS: No. We were left in a large space. Afterwards, later on, they placed us in maximum security.

Q Yes. Were you placed in maximum security?

A Two days after the bail.

Q Can you describe for us the conditions of maximum security?

In other words, with whom were you incarcerated in maximum security?

A There is about five cells with a very narrow passageway. And you're behind bars there.

Q Were you able to -- who -- withdrawn.

In your cell in the maximum security area, was anyone else incarcerated together with you in your

cell?

A Yes. Six people.

Q Now, who were they?

A Six others. The ones I knew were there, who were introduced to me, who were Chileans. There was onw, Nuncio Bernard. There was Oscar Latieriere.

Q Was Dabed in your cell?

A No. Baded was in - - I think they put Baded in -- they put Baded in a place called the hole. He stayed there for a month.

Q Was Mellafe in your cell?

A No. Mellafe was punished, it seems.

Q Was Sergio Lazo in your cell?

A No. He was outside in a different one with Poblette.

Q Now, how long were you in maximum security?

A I think something like two months, three months.

Q So you were in maximum security until at least until July or August of 1974, correct?

A I don't remember. This takes me by surprise

Q It was at least two months?

A I think more, maybe.

Q When for the first time did you meet me?

A Once when they called the lawyer.

THE COURT: You can lead on this.

MR. FISHER: All right.

THE COURT: Let us have it on the record.

THE WITNESS: And all the Chileans went.

Q Do you recall meeting with me at the end of May or the beginning of June of 1974.

A No, I don't remember the day.

MR. FISHER: Your Honor, I will offer --

THE COURT: We will assume that that is true. Go ahead.

MR. FISHER: Thank you, your Honor.

Q Do you recall speaking to me with my partner, Nancy Rosner.

A Yes.

Q And at that time didn't you tell me you had been tortured in Chile and an American agent had been present?

A Yes.

THE COURT: Did you tell Mr. Fisher that the American agent was present when the other policemen were punching you?

THE WITNESS: I told Mr. Fisher that there

were two American policemen who were there when I was tortured.

THE COURT: When you were punched in the belly?

THE WITNESS: There was only one. And the other one was away, further away.

THE COURT: Did you tell them that the American agents made some kind of a gesture to indicate that he approved of the punching?

THE WITNESS: Only two days ago did I explain to Mr. Fisher everything that I had lived through. Never before had I spoken to him about the details of my torture.

THE COURT: Now, I asked you before when Mr. Fisher first saw you in May, did you tell him that the American agent was present when the policemen punched you six or seven times? Did you tell him that night?

THE WITNESS: I told him that I had been tortured by the American agents. Nothing else.

THE COURT: So you are telling me that you did not tell him in May that the American agent was present when the Chilean policement punched you; isn't that true?

Yes or no.

THE WITNESS: I told him that I had been tortured by the American agents.

THE COURT: I will assume he is saying --

THE WITNESS: Everything told

THE COURT: -- that he did not tell you, Mr. Fisher, that Mr. Cecil or an American agent was present at the precise time the Chilean police punched him six or seven times. I interpret that as the answer. He won't answer yes or no.

Go ahead. Continue, Mr. Fisher.

EK Q You did tell me, did you not, that you were tortured in Chile prior to being brought here to this country and that an American agent was present at that event.

A This is what I have always said.

THE COURT: You said more today.

Q Now, at that time did I ask you to explain in complete detail the circumstances of the torture?

MR. FRIED: If your Honor pleases, I will object.

THE COURT: overruled; I will allow it.

A I told you more or less the events.

Q Did I ask you for the complete details of

the event or just for a general statement?

A Just -- I told you a story, there was a story written out by each one so that that it would be sent to the United Nations.

THE COURT: Now, at that time didn't Mr. Fisher tell you that he represented Francisco Toscanino?

THE WITNESS: Yes, yes, he told me.

Q Now, when you were asked about Toscanino by Mr. Fried --

THE COURT: Now, i want to ask one more question, if I may interrupt --

MR. FISHER: Surely, your Honor.

THE COURT: Did Mr. Fisher tell you that he represented Mr. Toscanino before you told him you were tortured, or did you tell him that you were tortured first?

THE WITNESS: I don't remember.

MR. FISHER: What?

THE WITNESS: I don't remember.

THE COURT: Do you care to put on the record the sequence of events, Mr. Fisher? Wouldn't it be correct to say that you represented Toscanino, the Toscanino case having just come down, and to

explain to him what Toscanino meant?

If I were the lawyer, that is what I would do, but maybe I am not typical.

MR. FISHER: I am trying to recall, your Honor.

It is clear in my mind, your Honor, that the reason I resolved to represent Mr. Baeza was because of the success in the Court of Appeals in the Toscanino case.

Now, whether or not -- I remember that I was not called by Mr. Baeza directly but by another inmate who spoke Spanish and English whom I had represented. I recall discussing the principles of Toscanino with Mr. Baeza at some point.

But I remember this, too, your Honor, there was a very big time-rush on this case, there had been motions pending by the codefendant for a speedy trial, and the Toscanini issue was not really addressed at that time because I had anticipated doing what we had done before your Honor; in other words, making an offer of proof and then doing the hearing after the trial, especially because of the need to defend the case in chief.

Mostor just about all of the discussions with

Mr. Baeza concerned a defense to the merits, the video tape depositions were consummated, and we had to go to South America.

I have to be realistic about this; I have got to think what if I were Mr. Baeza, of course I would call Mr. Fisher if I heard of the Toscanino case, and that is the first thing I would talk about.

At that point in time, your Honor, at that point in time --

THE COURT: Now what I am saying is this:

You don't have to explain it in great detail to a defendant, to a client, all you need do is recite the principle and tell him what Toscanino stood for --

MR. FISHER: Well --

THE COURT: -- and he can start thinking back on everything that happened, and then he can start writing long letters to the U.N. and being smart, making speeches about being tortured.

MR. FISHER: I know that was not done --

THE COURT: All right.

MR. FISHER: Now, wait a minute, I want to be accurate, I know there was no complete discussion of what Toscanino meant, and I would be perfectly

frank with you, at that point in time I, myself, wasn't sure. Now there was considerable dispute as to whether or not just the treaty violation was enough, in fact --

THE COURT: Mind you, you got into the newspapers, the inmates at West Street must have read it.

MR. FISHER: The only article that got into the newspaper about Toscanino was the one in the Times by Mr. Lubasch, which came quite a while after the decision and, I think, your Honor, after I had spoken to Mr. Baeza for the first time.

THE COURT: All right.

MR. FRIED: Your Honor, it might be helpful for me to refer on this point to an affidavit filed by Fisher, Rothner & Screibner, signed by Mr. Screibner, on June 17, 1974, and which sets out - and which was filed in this case - it sets out on page 6 that, "At present Mr. Fisher has been informed that Baeza was transported to the United States from Chile without formal extradition proceedings and in violation of Chilean law."

MR. FISHER: That was the basis of information obtained while I was in Chile; As I recall, this affidavit was dictated to me over the -- it was

dictated by me over the phone to Mr. Screibner, your Honor.

Am I right about that? That is my recollection.

THE COURT: Does he claim a violation of the U.N. charter?

MR. FRIED: Why don't I mark it and hand it up?

THE COURT: I think it is a filed paper.

MR. FRIED: You are right.

THE COURT: I will look at it at my convenience. All right.

See if you can complete Mr. Baeza.

MR. FISHER: Yes, your Honor.

BY MR. FISHER:

Q So you had heard of the Toscanino decision, haven't you?

A Yes.

Q But as to the particular narcotic activities of Toscanino, whatever they may be, that you don't know?

A How could I know, I don't even know who Toscanino is.

MR. FISHER: I have nothing further.

THE COURT: Anything further?

MR. FRIED: I have nothing further.

THE COURT: You may step down.

(Witness excused.

THE COURT: Is there any other witness besides Mr. Kaufman, if I hear him?

MR. FISHER: No, your Honor.

THE COURT: All right.

You understand that after the test, if you want to offer it, then I will first hear Mr. Kaufman to see whether I regard polygraph testimony as reliable.

MR. FISHER: Mr. Kaufman has advised me, your Honor, that he has appeared before you.

THE COURT: I remember him very well.

MR. FISHER: I ask the Court's assistance once again to allow us, to get us into West Street tonight with Mr. Kaufman and an interpfeter and his machinery, and I hope it will be clear to them that we are taking a polygraph examination, otherwise there will be a further problem, and I would appreciate your Honor's assistance.

THE COURT: I will advise the Warden.

Tomorrow at ten.

MR. FISHER: Ten o'clock tomorrow?

THE COURT: It is only Mr. Kaufman, right?

MR. FISHER: There may be one or two documents, your Honor; there will be a couple of documents.

THE COURT: I might suggest to you that if you are unsuccessful in this challenge that instead of the sentencing on the 14th, it will be the 13th only because I have two very lengthy matters which you know on the 14th, but if it is the 13th, it will have to be at 9:30 in the morning.

MR. FISHER: Well, tomorrow is the 13th, your Honor.

THE COURT: I said ti was scheduled for the 14th.

MR. FISHER: The 14th.

THE COURT: He is going to be here, and I haven't completely made up my mind, but I see no sense in sentencing on the 14th if I can give you more time, because then I will have the pleasure of the other two matterrs on Friday.

MR. FISHER: I would appreciate that.

THE COURT: All right.

MR. FISHER: I would appreciate about an hour

in between, in between the proceedings tomorrow.

THE COURT: Surely; you can put the sentencing at two o'clock if you want to, because I will be here and it doesn't matter to me; it is your convenience tomorrow.

MR. FISHER: Thank you, your Honor.

THE COURT: I have nothing else on tomorrow.

(The Clerk confers with the Court.)

THE COURT: All right, gentlemen, I will see you tomorrow.

(At 5:00 o'clock, the session was concluded.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-14

CARLOS BAEZA, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

March 13, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: BERNARD J. FRIED, ESQ.
Assistant U.S. Attorney

IVAN FISHER, ESQ.
Attorney for Defendant

THE CLERK: Criminal hearing, United States of America against Carlos Baeza.

MR. FISHER: Your Honor, please, last night, thanks to the assistance of the Court, the defendant was permitted to have a polygraph conducted by Mr. Victor Kaufman. That was done, our efforts were concluded at about a quarter after 9 last night.

Your Honor, Mr. Kaufman has reported to me that the results of the test are inconclusive, they are not affirmative, they are not negative, and as a result he could not properly opine as to the veracity or non-veracity of the witness, Baeza. The questions that were asked were limited, I should say, to the extent of the participation of Mr. Cecil. There are only a few questions that one can put at a polygraph, you just can't ask a whole string of them. I am told the general approach is to ask three or four at the most. Three questions were put or directed at the participation of Mr. Cecil.

As I said, Mr. Kaufman has reported to me, and he is here in court, that the tests are inconclusive, they point not one way or the other.

Accordingly, your Honor, I withdraw the application for a hearing with regard to the admissibility of polygraph testimony.

In general, I thank your Honor for the opportunity to conduct the examination, however --

THE COURT: Is the hearing closed, are there any other witnesses?

MR. FISHER: There are no other witnesses, your Honor, there is, however, further offers of proof.

May this be marked?

THE CLERK: Seven-page document marked as Defendant's Exhibit C for Identification in the hearing.

MR. FISHER: If your Honor please, Defendan't Exhibit C for Identification is a copy that I myself made from 32 State, page 815, et cetera, which is the Treaty of Extradition and which, according to the Index of Treaties is still in force between the United States and Chile.

I would like to offer that to be considered in these proceedings for two reasons:

I submit, your Honor, that the Chilean Government was not acting as a government at all but was acting totally as an amanuensis for the United States Government throughout the course of their efforts, successful efforts, to obtain the presence of Carlos Baeza, and secondly, your Honor, and I am reminded of Judge Mansfield's language in Toscanino to the effect

that an abduction is unnecessary where in fact the Treaty of Extradition does not preclude a transfer and extradition for a narcotic offense. That is a factor apparently considered by Judge Mansfield.

THE COURT: Whom do you claim to be abduction?

MR. FISHER: Whom do I claim to be abduction?

THE COURT: Yes.

MR. FISHER: Agent Cecil and Agent Franguille.

THE COURT: What does the evidence show they did?

MR. FISHER: The evidence shows, your Honor, that in violation of Chilean law, in the absence of any proper effort to obtain Baeza into this country, they made a deal with the local law enforcement officials with whom they were in very, very close relationship to improperly, wrongfully remove Baeza and company from Santiago, Chile, under a sham expulsion, whereas the provisions of the treaty would have allowed Baeza to be --

THE COURT: What was sham about it?

MR. FISHER: It was sham in this respect:

Even under the Chilean law -- and it wasn't even under the Chilean law -- Mr. Baeza, according to -- and I want to offer this, the translation of the expulsion law of Chile under which according to the expulsion decree, and this is with regard to Baeza,the expulsion

was carried out -- but it is clear, the last --

May I first offer this as 6-A?

THE COURT: I thought it was in.

MR. FISHER: It was marked for Identification.

MR. FRIED: I have no objection, your Honor.

THE COURT: Well, it is the law. I can take judicial notice of it even if it weren't in evidence.

All right, mark it.

THE CLERK: So marked as Defendant's Exhibit D in Evidence.

MR. FRIED: Could you just mark it as 6-A, Government's Exhibit 6-A and have it marked in Evidence?

THE CLERK: The defendant was offering it.

MR. FRIED: I thought you were referring to the defendant's exhibit.

THE CLERK: The defendant is marking it.

MR. FRIED: Fine. I thought it would confuse the record to have it marked as two exhibits.

THE COURT: I don't care.

MR. FRIED: I have no objection, your Honor.

THE CLERK: So marked as Defendant's Exhibit D in Evidence.

MR. FISHER: The last paragraph:

"Those individuals who are subjects of the expulsion or abandonment measures, may freely choose

their place of destination."

Now one thing is perfectly clear, no matter whom you believe, and that is that that never happened. In fact, the United States made very, very sure it wouldn't happen, there were these negotiations between Cecil and the Chilean authorities to make sure that the expulsion was timed precisely with the extradition arrangements.

Now, taking everything Cecil said, and I say you should not, but taking everything Cecil said on face value, that was done. Cecil said, I am in a relationship with the Chilean Government such that of the 30 or so requests made for arrests by the United States Government only a few, only a few were denied.

How does he get someone arrested in Chile?

He makes a phone call.

Your Honor, imagine -- imagine someone calling up Mr. Fried or Mr. Cecil's counterpart in the United States, and this is from like Mexico: Hi, Bernie, arrest so and so, on an oral telephone call.

Nothing fits, no written requests, no nothing. That is just incredible.

THE COURT: Are you arguing the arrest? Apparently Mr. Baeza was under investigation for some time for narcotics.

MR. FISHER: That was not true, your Honor.

By whom, the Chileans?

THE COURT: The arrest was initiated --

MR. FISHER: No, your Honor.

THE COURT: (Continuing) -- by the Chilean Government, this record shOws, without the intercession and not at the request of Cecil.

MR. FISHER: Your Honor, I submit Mr. Cecil's testimony frankly may not be true on that point, but one thing is clear, whether it is or it isn't:

Mr. Baeza was arrested for narcotic violations.

THE COURT: They finally released him on documents, but the reason was apparently because he paid a bribe or I don't know what.

MR. FISHER: No, your Honor.

THE COURT: He paid a $5,000 bribe, didn't he?

(Continued on next page.)

MR. FISHER: That was after he had been arrested.

THE COURT: What I say is that he could have been for narcotics, but in order to get released, they might have charged him with the lesser offense, false documents.

MR. FISHER: Your Honor, there is not proof whatsoever in this record that he was arrested for narcotics, there is none.

In fact, I specifically asked Mr. Cecil:

"What did the Chileans tell you he was arrested for?"

"I assumed narcotics."

"Well, did you ask them?"

"No."

"Did they tell you?

"No."

"Did you ever see any reports or memoranda?"

"No."

THE COURT: Are you saying there was no basis for their arrest?

MR. FISHER: I am saying, your Honor, there is no proof in this record what the basis for the arrest was.

THE COURT: I must assume the validity of the proceedings by the Chilean Government. If you were

able to bring them in and prove that they had no basis, then I don't know where I would go from there, because if I were to go beyond the decree, which I doubt, but that certainly would meet your argument. Now, I don't know when Cecil said he doesn't know, that he is not privy to the Chilean process, I don't know if that means that there was no basis, that would just mean he doesn't know.

MR. FISHER: One of the documents I wish to offer, and I am trying to have it sent over from the office, is the release order that was admitted into evidence in the trial of this case already, which was the order of release, showing--

MR. FRIED: I have the trial Exhibits, I can have someone bring them down.

MR. FISHER: This was my Exhibit.

MR. FRIED: I see.

I am sorry.

THE COURT: What does it say?

MR. FISHER: It says that he was arrested for violation of forged papers, and that he was released.

THE COURT: All right.

MR. FISHER: In other words, he was not arrested for narcotics.

The fact is, your Honor, that under the Chilean

law --

THE COURT: It says he was not arrested for Narcotics?

MR. FISHER: It says he was arrested -- It says, it says what he was arrested for, but it doesn't say what he was not arrested for.

THE COURT: All right.

The implication I got from the bribe was that when he paid, or somebody paid, $5,000 on account on a $10,000 bribe, that then the charges were changed, too.

MR. FISHER: No, your Honor, the implication that we sought, the inference we sought to be drawn was that your Honor was curious as to why one would be tortured for such silly reasons, such as that relating to cars.

Your Honor, the nature and expense of the involvement between --

THE COURT: Why would they then be torturing him, because he signed some paper, he said, on the side?

MR. FISHER: Number one, your Honor, I submit that torturing by the Chilean Police is something that is done as regularly as giving Miranda warnings in the United States.

Number two, your Honor, I submit that the payment

of the bribe shows a good reason why they continued to torture, or tortured in part. I think the reason they tortured in the first place was because Mr. Cecil was there, and he nodded his head, and that is what he wanted done.

THE COURT: I am ready to say this, there is nothing to that at all, nothing to that at all, I will not accept Mr. Baeza's version of what happened in that Police Station.

MR. FISHER: You know, your Honor, there is more in the record than Mr. Baeza's statement, there is Defendant's Exhibit B in evidence, B in evidence, the teletype. I think this is, frankly, a remarkable piece of evidence, it shows that Mr. Cecil was there on the spot, he scurried back to the Embassy --

THE COURT: You are referring to the point where they said they were going to seize the laboratory?

MR. FISHER: Interrogating, right, interrogating--

THE COURT: Where they say that?

MR. FISHER: Listen to this, your Honor, please:

"Osorio, Baeza, Resteppo, and Munoz are currently being interrogated by Chilean Police authorities, with hope of making laboratory seizure in Chile."

Now, your Honor, what does Baeza say here, the first question out of the box was, "Where is the labor-

atory?"

Now, what does that indicate --

THE COURT: Which indicates to me he was arrested for narcotics.

MR. FISHER: Which indicates to me, your Honor, he was arrested because of the United States interest in Baeza in connection with --

THE COURT: If he were arrested for documents, why would they ask, "Where is the laboratory"?

MR. FISHER: Because Cecil was there, and that Cecil wants to know because Cecil was investigating Baeza's connection with the narcotic operations described in this trial.

THE COURT: Why Cecil knew of Baeza was what the Chilean Police told him, and told him about it.

MR. FISHER: I don't think that is true.

THE COURT: The evidence here is that, I didn't say that.

MR. FISHER: Yes, he said that.

THE COURT: Oh, well.

You see, whether it is true or not is a fact-finding I must make.

MR. FISHER: Yes, your Honor, and I think I am permitted as to the incredibility of Mr. Cecile's statements.

THE COURT: Surely.

MR. FISHER: You have to begin with a comprehension of the kind of relationship Cecil and Franguille had with the Chilean authorities, it was close indeed. cooperative indeed, it was so close, so cooperative that from time to time Cecil would make a Freudian slip, and refer to "we," when he was referring to the activities of the Chilean Police.

THE COURT: I don't place that kind of emphasis you do, you are grabbing at straws, it was so close that Mr. Cecil would not give information he had to the Chilean Police, he didn't trust them, either, that is how close it was.

MR. FISHER: Your Honor, I don't believe that, either, I don't believe that Cecil didn't give them information, I believe that is where the question about the laboratory came from, and that is where the question about the airport came from, it came from the American investigation, not from the Chilean investigation.

There is no proof that Baeza was being sought or wanted by the Chileans in connection with narcotics, none at all, but the proof does show that the Americans wanted him for that, the proof does show that Cecil was there, the proof does show --

THE COURT: You are starting with the premise

that this was all planned by Mr. Cecil, and that Mr. Cecil told the Chilean Police that he wanted him arrested for narcotics, and that he wanted to know where the laboratory was, and they just carried out Mr. Cecil's orders. I reject that out of hand, there is no proof in the record that is so. So when you start on that false premise, everything else you build from that won't stand.

MR. FISHER: If in fact Carlos Baeza is telling the truth, then what is Cecil doing there during the interrogation?

THE COURT: I think he is interested in Baeza as a possible narcotics trafficker who is sending cocaine into the United States.

MR. FISHER: Possibly, according to Munoz, Carlos Munoz, with whom he is meeting on a regular basis, he is a narcotics trafficker --

THE COURT: Mr. Fisher, I think you missed a part of the evidence, they were really interested in Osorio.

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MR. FISHER: The Chileans were?

THE COURT: No, Cecil was. Mr. Baeza happened to be trading with Mr. Osorio, who was his business partner, even Baeza admits that, but he says it was legitimate business. So when you say that he called for the arrest of Mr. Baeza, there is too much evidence that disclaims that.

MR. FISHER: Your Honor, according to the testimony adduced at the trial here, Mr. Munoz would have us believe that Osorio and Baeza were equal partners in the venture, that there was no hierarchy as between Osorio and Baeza.

THE COURT: I don't say they weren't. That may not have been apparent to Cecil at the time he testified that the investigation was directed against Osorio.

MR. FISHER: Your Honor, if that were true, if that was his testimony, that is completely contradicted by the testimony adduced through Munoz.

THE COURT: Didn't you hear him say their primary interest was in Osorio?

MR. FISHER: I don't recall that, but if he did, it doesn't make any sense. Remember the testimony --

THE COURT: You say it doesn't make any sense, but the only difference is that you are trying to build Baeza up as a prime target for Mr. Cecil, and trying to

show that Baeza was the reason for Mr. Cecil contacting the Chilean Police, that he told them the whole story about Mr. Baeza, told them everything he knew about the trafficking in drugs, and that he initiated the investigation, and caused the arrests. You even had some testimony, or maybe a statement, that you saw somebody give, either through Franguille, or Cecil, give one of the Chileans some money.

MR. FISHER: A group of Chilean Police.

THE COURT: A group of Chilean Police some money.

It might have been to buy some -- whatever they make in Chile, maybe cigarettes.

MR. FISHER: It could have been.

THE COURT: It could have been.

What implication, what time reference did this have?

MR. FISHER: I saw this in the beginning of June, or the middle of June, of 1974, your Honor, on a trip that I had made down there.

THE COURT: June, 1974?

MR. FISHER: That is correct.

THE COURT: So that was a delayed payment, he probably had financed them.

MR. FISHER: Well, your Honor, this I think goes a little way to establish perhaps the kind and extent

of relationship between the Chilean Police and the Drug Enforcement Agents.

You know, a critical question here is whether or not the Chilean Police were functioning as a separate sovereignty, as they should have been, or whether or not they were nothing more than the amanuensis of the Drug Enforcement Administration --

THE COURT: That is right.

MR. FISHER: Now, getting back to this Baeza-Osorio business, your Honor, I am not saying that they weren't interested in Osorio, sure they were, but they were interested in Baeza, too.

I think what may have happened is, your Honor:

Carlos Munoz is in Canada, he is supposed to be met by someone in order to take custody of the Saxoline suitcases, and as I recall it, he leaves -- and consider the eloquence of the timing, your Honor -- he leaves on November 5th from Santiago, he goes to England or France, I don't recall which, and then to Toronto, arriving about November 6th, or the morning of November 7th --

MR. FRIED: I can help you, he arrived in Toronto on November 6th at 3:00 o'clock.

MR. FISHER: The trial minutes would be better, since that is in evidence.

Your Honor, the trial minutes indicate at page

428 of th- trial record.

Now, what happens, he gets a phone call from Osorio, who sounds nervous. This is November 7th.

I think it is possible, your Honor, that the Agents in this case began to wonder whether or not Munoz was in fact working as an undercover. Now I know that Cecil denied it, I asked him those questions, and he denied it.

Also, on my cross-examination, -- Well, I will get to that in a minute --

THE COURT: As I recall it, Munoz became a target after he was arrested in Canada.

MR. FISHER: No, Carlos Munoz was throughout an Agent. Now, this is a strange man, here is --

MR. FRIED: I object to the characterization.

MR. FISHER: Withdrawn "strange," he is "a strange man."

MR. FRIED: That is the man, your Honor, who was approached in South America, and he reported it to the Canadian Embassy, and ultimately went to the American authorities.

MR. FISHER: He is now a liaison officer.

THE COURT: He is the seaman?

MR. FRIED: Yes, sir, an ex-merchant mariner.

THE COURT: He meets somebody in a bar.

MR. FRIED: Yes, on the street in Val Paraiso.

THE COURT: They indicate that they wanted him, they want to bring him into some kind of business, and he then goes to the --

MR. FISHER: The Canadian Embassy.

THE COURT: Yes.

MR. FISHER: Right.

So Carlos Munoz is, or could have --

THE COURT: I think I have that story, I think he decided that he could make more money, and as a matter of fact, he did, I think, they paid him $400 or $500 a month,.and this was big money in Chile.

MR. FRIED: The record will indicate he received payment, I don't think it was that big.

MR. FISHER: He testified that it wasn't money that motivated him.

THE COURT: I think it is 90 percent money, and 10 percent patriotism, or morality --

MR. FISHER: In any event --

THE COURT: Money also helps.

MR. FISHER: In any event, whatever his motivation, and I am not questioning the credibility of Carlos Munoz, your Honor, not at all, what I am saying is this:

Just suppose the Agents decided that Osorio, by virtue of a couple of things, number one, the failure

to pick up the narcotics at the time when that had previously been arranged for, number two --

THE COURT: Osorio was supposed to pick the narcotics up in Canada?

MR. FISHER: No, your Honor, but it was Osorio, according to Munoz, who was going to arrange for the person to pick up the narcotics from Carlos Munoz upon his arrival in Canada --

THE COURT: Yes.

MR. FISHER: At a hotel given to him, or the name of which was given to him by Osorio, Osorio drove Munoz to the airport, if my recollection is correct.

THE COURT: Osorio or Baeza, at any rate, somebody took pictures --

MR. FISHER: That was Cecil taking pictures.

THE COURT: Cecil was taking pictures.

MR. FRIED: Of Baeza at the airport.

THE COURT: There was the car --

MR. FRIED: I don't have the transcript in front of me, but Baeza's driver, Baeza's driver, according to the testimony, picked up Munoz at a location in Santiago, Chile, and took him out to the airport, where he was prepared to board the plane at that time.

THE COURT: I recall it now.

MR. FRIED: There was a photograph taken of Carlos

Munoz looking into the departure lounge.

THE COURT: I recall a lot of cross-examination about whether he had called Cecil to tell him what was happening.

MR. FISHER: Right.

THE COURT: He was supposed to meet the car -- was it in the Mercedes?

MR. FISHER: Yes.

MR. FRIED: That trip was not, that was in the Puscho.

MR. FISHER: But on the cross-examination with regard to the meeting, the car that was used was a Mercedes.

MR. FRIED: That is correct.

THE COURT: I am confusing some times with others, when you talked about that street address, I couldn't remember whether we were talking about some testimony in Toscanino, or about some kind of a room over here, now I don't know which it was, but that is quite immaterial for this purpose.

MR. FISHER: Yes, and I don't argue it here, what I am arguing is that Mr. Munoz was supposed to deliver two Saxoline suitcases to someone who will be sent by whom they don't know, but Osorio feels that something is wrong.

Now, everything that Carlos Munoz knows, the Government knows, he is their Agent, he is literally swallowed up by the Agents accompanying him, and living with him, so that Munoz and the Government knows that there is something wrong with the delivery. And now they get a phone call on the 7th from Osorio in which it is clear, according to Munoz, that Osorio is nervous about something.

Now, I believe -- and I wasn't permitted to get the teletype to and from South America and North America, but perhaps they might have shown, if I had an opportunity to get them, your Honor, this:

That that information is now relayed to our men in Santiago, Franquille and Cecil, and that a decision is made: We must convince them that Munoz is okay. Maybe the thing that is worrying Osorio is this doubt about the legitimacy as a cocaine dealer of Carlos Munoz.

Now look at the question, according to Mr. Baeza, that is asked:

"Who did you drive to the airport last week?"

We know whom he drove, he drove Carlos Munoz.

Now, you are wondering, your Honor, why torture came about for a simple thing like that.

THE COURT: I have to believe there was torture and that those were the questions he was tortured about,

because he wouldn't give the answers, I believe that.

MR. FISHER: Your Honor, I submit, your Honor, your Honor should not come to a conclusion about credibility until the arguments have been made. If you are going to start off with the theory that Carlos Baeza is lying and Charles Cecil is telling the truth --

THE COURT: I found portions of what he was saying totally incredible.

MR. FISHER: Which portion, your Honor?

THE COURT: I will hear your arguments first.

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MR. FISHER: Consider the questions that were put to Baeza according to Baeza, one, where is the lab, two, what about this guy you took to the airport and three, the car. Now, the car relates to the airport too, and relates to the American investigation of Baeza, but now that Baeza is asked --

Now that it appears to Baeza that Americans and Chileans both want to know who this guy he took to the airport whom he knows as Carlos Munoz --

THE COURT: Let me ask you this question. I'm sorry to interrupt you. As I recall it, Carlos, or Munoz, whatever his name is, went to one of the labs or at least the place where they were drying the cocaine.

MR. FRIED: He went --

THE COURT: Did he know where the labs were?

MR. FRIED: Never testified to that. He went to Baeza's house and the testimony is, in back of Baeza's house the cocaine was being dried and in preparation was being placed in the suitcase. The laboratory testimony came from another witness entirely, Valenzuela. He was the witness who testified as to prior similar acts.

THE COURT: He was not a government agent at the time this went on?

MR. FRIED: No, sir.

MR. FISHER: The argument is this: By asking those questions, by causing the arrest of Baeza, by causing the torture by putting those questions, the government sought to perfect and work up and keep together their giant investigation they feared crumbling by virtue of the suspicion of the true nature of involvement of Carlos Munoz, the double agent, by insisting on Baeza on knowing who he brought to the airport.

They were convincing Baeza of one thing, that Munoz was not working for them because to a man like Baeza, he wouldn't be asked about Munoz if Munoz was working for the American Government. This is designed to convince Baeza that Munoz is okay; and interestingly enough, true there was a bribe, your Honor, how many did they release --

THE COURT: You are saying they asked the question, "Whom did you drive to the airport to convince Baeza"?

MR. FISHER: That Carlos Munoz was a dyed-in-the-wool conspirator and not a double agent. Yes.

THE COURT: And of course, I am to assume they tortured Mr. Orsorio for the same reason?

MR. FISHER: There is no testimony Osorio was

3 tortured.

THE COURT: Who did they say they --

MR. FISHER: That was Enrique Monoz.

THE COURT: They apparently asked him the same question.

MR. FISHER: I don't know.

THE COURT: Where is Enrique Munoz?

MR. FRIED: He was a fugitive handed down in the indictment.

MR. FISHER: Munoz -- another significant fact --

THE COURT: Excuse me, Osorio was there?

MR. FRIED: He was also there.

THE COURT: There is also an occasion that they tortured Osorio?

MR. FISHER: That's correct, or that he made a statement.

THE COURT: He made a statement, then they tortured Baeza.

MR. FISHER: At the time they're torturing Baeza, Baeza doesn't know Osorio gave a statement.

THE COURT: But they have the information from Osorio. Right?

MR. FISHER: Right.

THE COURT: So they're torturing Baeza?

4 MR. FISHER: Osorio doesn't know where the plant is according to the testimony.

THE COURT: Osorio doesn't know where the lab is?

MR. FISHER: Neither does Baeza. They don't know that.

THE COURT: Hold it there. But Osorio isn't able to answer that question, is he? He's not tortured?

MR. FISHER: He gives another statement which your Honor won't let me have, in which he gives other information. Your Honor has it and the government has it, I don't have it.

THE COURT: It had nothing to do with this.

MR. FISHER: Fine. He gives him information beyond the scope of the inquiry.

THE COURT: Why doesn't he give them information about the lab?

MR. FISHER: He doesn't have it.

THE COURT: They don't believe Baeza when he says that and they torture him?

MR. FISHER: Baeza gives them nothing, Osorio gives him something.

THE COURT: You say that satisfies the torturers?

MR. FISHER: Our position is, this torturing wasn't done for gleaning information.

THE COURT: Why didn't they do the same to Osorio? Why should they try to convince Osorio that Munoz wasn't working for the government?

MR. FISHER: They probably did a lot sooner since Osorio cracked a lot quicker.

THE COURT: Your investigation is so full of holes it leaks like Swiss cheese.

MR. FISHER: I don't think so.

THE COURT: I do. If you told me, Osorio was brutally beaten the same way, I could understand. Osorio and Baeza are in the same position with the same information totally --

MR. FISHER: We have no way of knowing to what extent Osorio was tortured.

THE COURT: You took an examination of Osorio. You had an opportunity to find him out. It was a completely cooperative statement. Mr. Osorio was willing to lie for Baeza, and he would do more for him.

MR. FISHER: Mr. Osorio was unwilling to discuss the events of the arrest.

THE COURT: That's all right.

MR. FISHER: He was unavailable to me.

6 THE COURT: Look how helpful it is now. You can say you don't know.

MR. FISHER: I wish I did. I think the reason Osorio was very reluctant to discuss that aspect with Baeza's lawyers because Osorio gave them a statement. Your Honor doesn't necessarily have the complete statement Osorio made.

MR. FRIED: You have everything in the possession of the government.

MR. FISHER: Which is hardly the complete statement that Osorio made.

THE COURT: How do you know it's not complete?

MR. FISHER: I don't know that it is or isn't. According to Mr. Cecil this is what they told him.

THE COURT: This is an easy argument not having a base.

MR. FISHER: There is. Osorio and Baeza are in Poblete's room in the morning. Osorio and Munoz are taken out first for 10 to 15 minutes. Not until 10 to 15 minutes elapses was Baeza removed. I don't know what happened to Osorio. No one does, from this record in this 15 minute span. They may have -- we had a discussion, joking discussion, about all you or I would have had to do is see the machine and told them what happened. We don't know what they did to

Osorio to what extent. All we know that it was 10 to 15 minutes later that Baeza is taken down. Torture is a matter of course. It was not something the Chilean police officer was reluctant to do at all. Not at all.

THE COURT: All right. I may go along with you. But if they tortured him, it wasn't to get information. It may have been to shake him down for a bribe.

MR. FISHER: I think I tend to agree with you in part. I don't really think a principal motivation was to find out at that point of time where the lab was. I think the principal motivation may well have been to convince Baeza and Osorio that Munoz was okay. That he was all right. After all if -- you say why did they torture Osorio? Look, if Osorio could be persuaded of the true intention of the Chilean police in 10 to 15 minutes to the extent of giving them a statement, he could be persuaded by a simple question, we also want to know about -- also your Honor, at this time, I think Mr. Fried is correct, it was Baeza who drove.

It was Baeza who drove Carlos Munoz to the airport. Baeza is driving.

THE COURT: So that's the information

concerning the airport? How about the labs. Where are the labs?

MR. FISHER: With regard to the labs, your Honor, the situation is this: Please recall the testimony of Valenzuela. According to Valenzuela, he supplied 2,000 kilograms of cocaine, some incredible figure, your Honor.

THE COURT: That was a big operation.

MR. FISHER: He was quite proud of it. Do you recall him?

THE COURT: I certainly do. He said it was inconceivable that he could have bought so many kilos of cocaine from Baeza --

MR. FISHER: No, Baeza was buying from him.

THE COURT: That's where you tried to show that the Peruvian cocaine was pure or better?

MR. FISHER: Than the Bolivian. When Valenzuela testifies in the Southern District, he is not so much a supplier, he's a buyer.

THE COURT: Well, he's like a lawyer, he. They argue one thing on Monday and a different thing on Tuesday.

MR. FISHER: Except, your Honor, I am not under oath. I wasn't trying to put somebody in jail and he was.

9 THE COURT: So that in my humble opinion, a cocaine buyer could be a seller --

MR. FISHER: In view of the extent of his operations, eight factories, 80 employees and about half of the Chilean Police corrupted on his payroll all in an attmept to manufacture cocaine seems a little absurd to think that now he's buying cocaine besides producing it himself. Valenzuela's credibility isn't an issue for these proceedings, either, your Honor.

THE COURT: I have known some big producers that went short on one day and then bought some.

MR. FISHER: Valenzuela never testified that he told Baeza or Osorio where the plant, or his plants were. I think your Honor has had a good deal of experience in narcotic cases and I think relying on that broad base, you can infer that more likely than not Valenzuela never told Baeza or Osorio where his plants were. That's information you want to keep. Also, recall this, there wasn't this warm and trusting relationship between Valenzuela and Baeza.

THE COURT: Was Valenzuela a manufacturer?

MR. FRIED: Valenzuela was the manufacturer. He was the man who owned laboratories and also

was the man who also testified about throwing his wife out the window.

MR. FISHER: This is the man I went to South America to find his psychiatrist.

THE COURT: How many times have you thrown your wife out the window --

MR. FISHER: Not quite in that form, your Honor.

THE COURT: Now, so Baeza was not the manufacturer.

MR. FISHER: No, your Honor.

THE COURT: He bought the cocaine from Valenzuela?

MR. FISHER: Correct.

THE COURT: But the police tortured Baeza to find out where the labs were?

MR. FISHER: I think they tortured really for a couple of other purposes.

THE COURT: I know to convince him that Munoz is okay.

MR. FISHER: And also to get the money. It's no problem for them. How difficult is it to attach an electrode to a genital and turn on the machine. It's a cinch. They have got the equipment handy.

THE COURT: Maybe they want to find out what he knows?

MR. FISHER: If it's a sham just like this expulsion, if you have another purpose or a couple of other purposes that's the way to do it.

THE COURT: Maybe the police aren't going to change it, but I can think of a hundred other questions to ask Mr. Baeza, if the purpose was to convince him that Muroz was not a government agent. There is nothing in it that the Chilean --

MR. FISHER: All I am submitting is that Cecil said,"Ask these questions."

THE COURT: Oh, that they didn't even ask why? Ask the questions and torture him?

MR. FISHER: "Listen, during your torture," and I'm sure Mr. Cecil wouldn't have used such an ugly word, "during your interrogation, ask these questions, 'And by the way, when you make the search of the houses, get me what you find, and by the way, when you're finished with the interrogation, tell me what you learned. And by the way, when you're finished going through the documents that you seized, we're very interested in it.'"

THE COURT: The mixture isn't pure. Some of it is based on evidence and some of it is based

on Mr. Fisher's imagination.

MR. FISHER: Well, most of it based on 7-A, your Honor. I would also add the testimony adduced yesterday afternoon of Mr. Cecil.

THE COURT: That has been an interesting discussion but I don't know if you have anything else to say. I am not convinced at all by your argument that the government, Mr. Cecil, in particular, framed the questions , directed the interrogation, torture. The police might even have applied electrodes or used other means of torture, strapped him on a table so that he was limp after it happened. All that might have happened. I doubt it. I doubt all of it happened.

I think Mr. Baeza's imagination was at work. If I have the time I will point out the holes in his testimony. He couldn't remember as recently as the time he spoke to the probation department that he had headaches and knew the headaches were due to the electric shock that passed through his body.

I would say that if, and I am trying to place myself as Mr. Baeza, meeting my lawyer trying to tell him what happened to me. I wouldn't say I was tortured. I'd say, you know what those fellows

did to me, I would describe it in the minutest detail. He said that after he heard something about Toscanino.

Now, later on, sitting in the cell, 24 hours a day with nothing else to think about, watching a little television. Now you can fill it in, you can picture yourself being carried limp out of the room, out of the torture room. You can picture yourself, having the electrodes applied to your genitals. You can picture yourself, three men almost at the same time punching him.

Now, at one time he said somebody slapped either he or one of the other parties. That's a little believable. That's an impatient undisciplined police officer. I can imagine that happened out in Chile.

MR. FISHER: I suppose hundreds of people examined in all countries, I suppose these hundreds and hundreds of people are having mental cramps to exaggerate. You invite somebody to tell you what happened to him, if any indecency occurred. You would find that some of the -- no, these things happen.

THE INTERPRETER: The defendant doesn't wish me to continue interpreting for him.

MR. FISHER: I wish you to do that.

THE COURT: Maybe he doesn't like to hear what I have to say, maybe just what Mr. Fisher has to say.

MR. FISHER: No, interpret the whole thing.

THE COURT: He doesn't want to hear that I called him a liar. That's about it.

THE INTERPRETER: He said: "I don't want to hear."

THE COURT: He tailors his testimony and why shouldn't he, nobody is here to rebut it, he's in the subterranean passage and doesn't know how much could be rebutted by Mr. Cecil and other documents, so he brings Mr. Cecil in just enough that the Court might find Cecil was there and directed it. He is not quite sure he heard his voice and from everything that occurred, the Court might, if it believed it, believe the established facts infer that indeed it was Mr. Cecil who was there and who directed it.

Just enough. The trouble is, I don't believe what he says.

Would you like to say something? Do you wish to say anything, Mr. Fried?

MR. FRIED: I am going to, but not in detail Ihad originally intended. The point I would like

to make concerning the Valenzuela identity of the argument that Baeza was mistreated by the Chilean police in an attempt to convince him that Carlos Munoz was in fact not a government oficial.

I think it's preposterous when the record is examined, Charles Cecil, testified that that an arrest occurred right in the middle of the ongoing investigation. The evidence at the trial that was here this past summer indicated that as a result of that arrest there was difficulties, in fact the delivery was not effected in New York but Canada and if they had to try to resurrect it they would have to come down to New York.

There were phone calls that went back and forth to South America. It's almost saying --

THE COURT: Mr. Fisher built a lot of it on, I think, what Mr. Munoz related in a telephone conversation. I didn't know whether it was that Mr. Osorio said he was nervous or Mr. Munoz said or Osorio sounded nervous --

MR. FRIED: He said Mr. Osorio sounded nervous. It would have been preposterous for the American officials in the context of this investigation to have the principals arrested in South America and they could in effect destroy an ongoing

investigation in the United States.

They had time to see what was happening. If they were nervous they could have waited a week and see what happened. In addition, if Carlos Baeza is safely in jail and Osorio is safely in jail, what difference does it make what they think at that point. They are out of the way.

The operation is going on. They had no way of getting information to anybody. In fact, the testimony ultimately was that after the week passed in which Carlos Munoz didn't receive a subsequent phone call from -- well he received a call from Baeza's mother and she told him things would be taken care of.

At that point they still haven't seen their son, Carlos Baeza. The testimony of the wife I think is --

THE COURT: The significance of that escapes me. The fact he was held incommunicado --

MR. FRIED: The point if they're trying to convince, according to Mr. Fisher's argument, they are trying to convince Baeza that Munoz is not a government operator. The reason for that is so that he could conclude the delivery to take place in North America.

MR. FISHER: No, the reason for that is that the delivery would be completed. Not that Munoz would complete it but that Baeza and Osorio's assistance will be able to complete it and Baeza and Osorio, in jail, the fact they are in jail, their communication with the people in Canada is still important in order to complete the deal. The fact they were in jail would not, does not assure that Carlos Munoz's cover would not be blown.

THE COURT: Suppose that is so, that is a double-edged sword because the fears and fact they are in jail should have generated additional fears in the family and you would expect the relative to communicate with Mr. Munoz. It's just a possibility.

MR. FISHER: You know what they did, assuming the guilt of Baeza, all right, which we must at this point in the proceedings, assuming that he did what Carlos Munoz said he did. We are dealing with allot of money, your Honor. Remember what happens when Munoz finally comes back, Carlos Baeza doesn't meet him at the airport although he's supposed to be bringing in the money. Somebody by the name of Lujan is sent to meet him.

Carlos Munoz never meets Baeza again or Osorio.

THE COURT: He has already completed at this time, hasn't he?

MR. FISHER: No, he doesn't know that -- you mean the torture?

THE COURT: Yes. And yet he continues to complete the deal and get the money.

MR. FISHER: He doesn't do anything else.

THE COURT: He says Lujan --

MR. FISHER: Sure, that's regarded as enough protection.

THE COURT: Mind you, he must know from the beating that the airport is under surveillance and yet he sent someone who might lead the police to his door. He has to meet Lujan someplace to pick up the money, doesn't he?

MR. FISHER: But Lujanis a -- if you know, knowledgable commodity. Baeza is very busy according to Munoz, meeting with him again and again together with Osorio. Suddenly no more meetings with Munoz. No more meetings and this, a man who is supposed to have brought back money. Interesting-ly enough, your Honor, please look at what is on Defendant's Exhibit B, relate it with a piece of the testimony of Carlos Baeza.

Baeza says the man who is released after

the money is paid is Enrique Munoz.

Now, your Honor, Munoz is the guy according to Exhibit B, on whom they find two newspaper articles relating to the Royal Canadian Mounted Police seizure in Toronto that related to the first trip to Canada.

So, they release Munoz, I think. Why Enrique Munoz, why not Beaza, why not Osorio, why do, according to Baeza, they take Munoz directly to the airport?

So that Munoz could be released in order to help make arrangements for the completion of the deal in Canada because he is the guy, obviously -- I am sorry, there is a Carlos Munoz.

THE COURT: I am confused again. There are two Munozes. ONe is an undercover agent and the other is part of the conspiracy?

MR. FRIED: That's correct.

THE COURT: You say they released Enrique Munoz for what purpose?

MR. FISHER: In order to allow Enrique Munoz to arrange for, now that the conspirators have been convinced that Carlos Munoz is a legitimate cocaine helper, now Enrizue Munoz is released because he's the one with the newspapers in his pocket about the Toronto situation. He's the one

most likely to be making the arrangements for the receipt of the narcotics from Carlos Munoz in Canada and so they take him right to the airport so he can leave and help make arrangements and sure enough Obando and Vargas Vega, a couple of days later or a week later or something, do in fact pick up the narcotics from Carlos Munoz in New York.

THE COURT: What is Enrique Munoz --

MR. FISHER: I would say this, your Honor, Enrique Munoz is the one who ultimately makes the arrangements for the delivery of the narcotics in New York.

Please recall this testimony, your Honor: Originally the narcotics was supposed to be delivered in Canada by Carlos Munoz. It is not. Munoz ultimately goes down to New York, Carlos Munoz, goes down to New York, where the transaction is finally completed.

Now, in other words, there are these changes in plans. Who could have been authorizing those changes? Osorio and Baeza are both in jail. The only one out is Enrique Munoz that we know of.

THE COURT: There were five arrests, weren't there?

MR. FRIED: All the men in the family were

arrested. All the men in the family were arrested. There is testimony that Osorio was arrested. In fact there is also testimony that one of the sons, Mrs. Baeza's --

MR. FISHER: Every man at the wedding -- they were arrested the next day, but none of them were connected by any testimony.

THE COURT: Couldn't they be carrier pigeons?

MR. FISHER: Not yet.

THE COURT: Only Baeza and Osorio are held incommunicado. The others were released. Couldn't they have been told about the deal and given instructions?

MR. FISHER: The testimony shows that Carlos Munoz calling on November 10th for new instructions -- Now, at this time, all those men who were released were no lor r able to communicate with Osorio and Baeza, so, who is giving them the new authority to go to New York and make a different deal?

I think the record would have to reflect ultimately it was Enrique Munoz, the very guy they let out.

THE COURT: That's just your statement. I can't come to that conclusion on just your statement.

Enrique Munoz is taken to the airport and that's the last we hear of him.

MR. FISHER: We know, subsequent to his departure from the jail, new plans are authorized and a new delivery schedule, new delivery modus operandi, are put into force and effect.

THE COURT: You may continue, Mr. Fried.

MR. FRIED: First, on this point, the change in plans in Canade, I don't think I have to go into that. The change in Canada occurred at the decision of the agents to bring them from Canada to New York.

THE COURT: Mr. Fisher said who sent Obando --

MR. FRIED: The further testimony was it wasn't until he was in New York, the following week that he called back to Mrs. Baeza --

THE COURT: I recall that they didn't show that.

MR. FRIED: The time frame, what we have done here is raised --

THE COURT: What interpretation --

MR. FRIED: Enrique Munoz was not released until half of the bribe was paid.

THE COURT: What interpretation do you put on that statement?

MR. FRIED: The interpretation I put on it is consistent to what is testified to. One thing I have lost completely and I don't want to ask this of Mr. Fisher, but I ask your Honor, is the position that the arrest was caused by the American Government and then, for purpose of keeping Munoz cool or is it the position that the arrest was first effected --

THE COURT: I would like to ask Mr. Fisher another question regarding the arrest.

MR. FISHER: Your Honor, I think this is a continuing joint operation between the Chilean and United States Agents down there. I think under the DC -- has that been offered? Is that in evidence?

MR. FRIED: I think that's Government's Exhibit 2.

MR. FISHER: The treaty has not been offered?

THE CLERK: No.

MR. FISHER: I offer the treaty, your Honor.

MR. FRIED: No objection.

THE COURT: Mark it.

THE CLERK: So marked as Government's Exhibit C in evidence.

(So marked)

MR. FRIED: We offer Government's Exhibit 2

in evidence.

MR. FISHER: No objection.

THE CLERK: So marked.

(So marked)

MR. FRIED: I would also ask to offer Government's Exhibit 3, which is the arrest warrant.

MR. FISHER: No objection.

THE CLERK: So marked in evidence.

(So marked)

MR. FISHER: Your Honor, I would offer Defendant's Exhibit A, which was the stay granted to Sergio Lazo, May 4, 1974.

MR. FRIED: I object to it.

MR. FISHER: In order to prove there is a procedure in Chile in which a stay can be granted.

MR. FRIED: The government objects to it.

THE COURT: Mark it.

THE CLERK: Marked Defendant's Exhibit A.

(So marked)

MR. FISHER: I also offer Pages 22 through the conclusion of the deposition of Mrs. Theresa Baeza, which was received in part during the trial proceeding in this case. The pages I am offering now included by your Honor, they relate to the

torture which your Honor concluded had no proper materiality with regard to the proceedings.

THE COURT: Any objections?

MR. FRIED: No objection.

MR. FISHER: I am offering Pages 22 through the conclusion, and if you wish the rest in, for these proceedings, I have no objection.

MR. FRIED: It's part of the record.

THE COURT: Mark them.

THE CLERK: So marked as Defendant's Exhibit E.

(So marked)

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MR. FISHER: In response to your Honor's question, the Expulsion Order, the only shred of paper suggesting any legality at all to the way Baeza was brought here, recites that the seven defendants -- I am sorry, that the seven victims of this alleged expulsion, that the basis of it is that, "They devote themselves in Chile to the narcotics traffic, and are recognized nationally by said crime."

Your Honor, since we have Defendant's Exhibit D, which is the translation, I think the record ought to have the original, and I would have previously marked Government's Exhiiit 6 for identification as Defendant's Exhibit D-1 in evidence, and the portion of the Exhibit referring to D-1, which has been articulated by a blue, ballpoint pen --

MR. FRIED: I have no objection.

THE CLERK: So marked, Defendant's Exhibit D-1 in the hearing.

THE COURT: All right.

MR. FISHER: Your Honor, here again there is a statement obtained from Osorio which I have not been able to see, and which might be of importance, but the Chilean decree lists the following crimes, which your Honor has already noted in the record, aren't articulated as to specific persons, but generally with regard to the seven,

the Chilean decree recites that each one of them has a long criminal record. Now the Director General of Investigations, Police, by memo number 91, on April 30th of this year, informs that each one of them has a long criminal record.

Baeza has testified, and that has not been contradicted, and it could have been, that he has no criminal record, never did, in Chile. But included in it are the following crimes:

"Fraud, theft, vagrancy, falsification of public documents, housebreaking, attempted homicide, unauthorized possession of firearms, infraction of the foreign exchange law, and traffic in narcotics."

Now, I don't know what is in Orsorio's statement, or if in fact it relates to any of these things, but there could be a connection between the interrogation on November 9th and the decree that ultimately follows months later.

THE COURT: All right.

Everything, of course, is possible.

MR. FISHER: Well, would your Honor indicate, on the basis of your reading of the Osorio statement, whether or not that could be the case?

THE COURT: May I see the statement again?

(A sealed envelope was then handed to the Court

by the Clerk of the Court.)

(The Court then perused the document.)

THE COURT: No, it has nothing whatsoever to do with it. This statement implicates somebody who is absolutely unfamiliar, whose name hasn't been mentioned as far as I know.

MR. FREEMAN: That is correct, your Honor.

THE COURT: It has nothing to do with the case, it has nothing to do with Mr. Baeza, or anybody else named in the Conspiracy, it is absolutely unrelated to the trial, United States against Baeza, and totally unrelated to this claim. If there was the slightest thought that this might conceivably somehow, after examination, reflect on the issues either here or even in the case, I would suggest at this point that it be turned over. It has nothing whatsoever to do with it.

MR. FISHER: I said I didn't know.

THE COURT: Nothing, as if it were a different trial.

MR. FISHER: The record should reflect, though, your Honor, that whatever the contents of, I believe, Government's Exhibit 4 for identification, there is no testimony that it represents the full and complete, even the full and complete rendition of the Chilean Police version of the Osorio statement, much less the full and

complete version of the Osorio statement, and since I wasn't allowed to inquire about that particular statement, I don't think I should be, or the record, or the defendant Baeza's record, should be prejudiced by any inferences that could be cleared if I had been allowed to inquire into the area of that statement.

In any event, your Honor, what happened here, and let us take Cecil's Activity, and assume that it is true --

THE COURT: I am not going to give you more than a few moments, Mr. Fisher, because I think I have a pretty good idea of the testimony, I am going to review Toscanino, and read it again, I am going to read Newharn, Frisbee, Kerr, Sobel --

MR. FISHER: Don't read Sobel, your Honor.

THE COURT: You don't want me to read Sobel?

I am going to deny the motion to dismiss, I will try to make findings, I will try to point out the inconsistencies in Mr. Baeza's testimony, I will try to tell you why I find this way.

Now, it is a quarter after 11:00, I am talking about 2:00 o'clock. If I cannot do this at 2:00 o'clock, then I will say motion denied, and I will try to file a written opinion in a short time.

MR. FISHER: Well, your Honor, this is not a motion

to dismiss.

THE COURT: It certainly is.

MR. FISHER: No, your Honor.

THE COURT: You are challenging the jurisdiction.

MR. FISHER: Your Honor, this is a motion for requesting an Order directing the Government to release Carlos Baeza, this is a motion to vacate the judgment of conviction, it is not a motion to dismiss the indictment.

THE COURT: If we have no jurisdiction--

MR. FISHER: For there was --

THE COURT: Incidentally, I don't know what would happen because I don't even want to think about it, but as I understand the motion, and that motion that was made in Toscanino related --

MR. FISHER: It was an Order directing the Government --

THE COURT: Yes, and to return him to where he came from.

MR. FISHER: No, not to return him anywhere, to just release him.

THE COURT: He has no status here except as a defendant.

MR. FISHER: Under Rashauer, what should happen in Toscanino, or in the Baeza case is that he should be released and given a thirty-day period of time within

which to seek asylum in some country.

Now, the authority for that is of course Rashauer.

THE COURT: Rashauer?

MR. FISHER: United States against Rashauer, an extradiction case in the Supreme Court, your Honor, where someone who had been extradicted from Britain to the United States on crime A was ultimately prosecuted here for crime B, and the Supreme Court said, No, you can't do that, the extradiction was only for crime A, you must release him and give him thirty days in order to go some place.

THE COURT: You don't return him to the country from which he was extradicted?

MR. FISHER: No.

THE COURT: I don't think we will reach that, but I understood --

MR. FISHER: I am not making --

THE COURT: You say we have no jurisdiction?

MR. FISHER: You have no jurisdiction. You have jurisdiction to indict, there is nothing wrong with the indictment, certainly, certainly Baeza, according to the charges made by Munoz, violated the narcotic laws of the United States --

THE COURT: That is what is so weird about the entire proceeding, because in Kerr and Frisbee, the only

question on due process was whether the trial was fair. If he is here, you never raise a question of personal jurisdiction. That is a civil concept, did we serve him properly. If the person is here, it is just incongruous to me to say, He is here, but we don't have the right to prosecute him because of something that happened elsewhere.

That is why I think Lujan tried to return to Rashauer and say, It is only when our Government does something that actually shocks the conscience, like opening up somebody's stomach to seize evidence --

MR. FISHER: They didn't go anywhere that far in Rashauer.

THE COURT: (Continuing) -- that we won't allow the evidence to be introduced.

You say that what you want here is that Mr. Baeza be released, and seek his asylum over a perod of thirty days?

MR. FISHER: Yes, seek asylum over a period of thirty days.

THE COURT: And if he can't do it, what, you then extend it?

MR. FISHER: Well, well, we will cross it when we come to it.

THE COURT: We don't even have to cross the first

bridge.

MR. FISHER: The point is that there were two Chileans amongst the many, many others who were brought up in this alleged expulsion, one of whom was the wrong guy, the other one was acquitted.

THE COURT: What did they do with the wrong guy?

MR. FISHER: I believe they arranged -- I think this was Carlos Choy, your Honor, and it was Choy's request to return to Chile, where I think he wanted to go, but with regard to Colon, he was acquitted before Judge Guagliardi in the Southern District of New York, and he has been released.

THE COURT: Where is he?

MR. FISHER: That, I am told, is a secret, at Mr. Colon's request, but I think Judge Guagliardi -- Well, I spoke with Mr. Colon's attorney regarding it, Edward Panzer, about a week ago, and Mr. Panzer told me that Colon had been released by order of Judge Guagliardi.

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MR. FRIED: Your Honor, may I comment on that, on some of these points?

First of all, the Government's position has always been, because there were no formal motion papers filed in this case, that we never knew how to construe this motion. In the Toscanino case, the phrase is that if the Court finds the defendant's allegations are supported, then he should return to the status quo ante, but the Toscanino case doesn't address itself to that question.

Your Honor, I have a memorandum and an affidavit here that I filed with Judge Costantino in United States against Sergio Lazo, and if Mr. Fisher has no objection, I will hand it to the Court, it might have some --

MR. FISHER: I haven't seen it.

MR. FRIED: I will show it to you later.

THE COURT: It is a paper filed in this Court?

MR. FRIED: It is filed downstairs.

THE COURT: I can read it.

MR. FRIED: It lists the five cases in the Southern District and the Eastern District which dealt with similar expulsions, and in a footnote, refers to two or three other situations.

Now, Colon was in fact acquitted on October 30th, and my understanding is that there is a problem with the

Chilean Government taking him back.

I think that you are aware of that?

MR. FISHER: No, I am not aware.

THE COURT: That may be the trouble, they may not want to take him back, so the Government, our Government, says, What can we do about it, what other country would you want?

MR. FISHER: That is the last place in the world he probably wants to go, from what I understand, to Chile.

THE COURT: That is another possibility there, that it is the last place in the world that he wants to go.

I can tell you this, if our extradition treaty means anything, I should think that if Chile wanted him, and they were charging him with narcotic violations, that then we would have to return him.

MR. FISHER: Well, that is a different question, that is assuming that Colon was here illegally, to begin with.

I don't think this country can extradite anybody anywhere over whom it doesn't have proper jurisdiction. Extradition is a civil proceeding, your Honor, that is clear.

MR. FRIED: It doesn't apply to the merits of

this case --

THE COURT: I don't want protracted argument on this.

MR. FISHER: That is not the issue.

THE COURT: You mean that every alien that comes in illegally into the country, without papers, and commits a crime, or escapes from a country, let us say, where he committed a crime, and is here illegally -- You are telling me that if he committed murder in Chile and escaped from Chile and came here illegally, --

MR. FISHER: No, no, no.

THE COURT: (continuing) -- that they couldn't extradite him?

MR. FISHER: I am not, I am saying where the host country illegally obtained jurisdiction over the person, then it cannot extradite him.

THE COURT: Well, I can't discuss that, because I don't like to talk about a matter unless I know at least something about it. I won't comment on that at all, I would rather research it before I talk about it.

MR. FRIED: It is moot.

THE COURT: Yes, that is right.

MR. FISHER: It is not here the issue, that issue is not here.

THE COURT: That is right.

MR. FRIED: The Government's position on its merit is that certainly the motion should be denied, and that the Lujan case, page 1206 of the slip opinion, I think it is there indicated that there has to be at least a protest by the foreign country before the violation of the law of the foreign country is cognizable in this country, and, therefore, I think, --

THE COURT: There is no question in my mind that treaty rights can be exercised only by the extraditing party, which means the sovereign, and not the individual.

MR. FRIED: And that is the position that has been taken by the other Judges who are referred to in this Affidavit on the question of the Expulsion Order. Whether he was given his choice to go to various other places or not, that hasn't been brought out in this matter.

THE COURT: I don't think we have to reach that question, I might have a case where I might have to decide what to do with someone who is here and acquitted, and might be subject to severe penalties in the country who surrendered him, and we might have that in the Dabed case, and we might have that in Toscanino, but we don't have it here.

(At this point, Judge Mishler discussed the Toscanino case with counsel. A transcript of these proceedings is under a separate caption.)

* * *

(Following a discussion on the Toscanino case, the Baeza case was again taken up.)

THE COURT: on Baeza, will you be ready for this afternoon?

MR. FISHER: I think two o'clock would be all right, your Honor.

May I get a copy of the pre-sentence report at this time?

THE COURT: Do we have a probation officer here?

On Baeza, do you have the Baeza report?

PROBATION OFFICER: No.

THE COURT: If Mr. Fisher goes back to the probation office will you, will you deliver a copy of the report to him?

PROBATION OFFICER: Shall we take it from the probation office?

THE COURT: Yes.

PROBATION OFFICER: Yes, I will give him ours to read.

THE COURT: Yes.

All right, I would appreciate your doing that.

MR. FISHER: Can we mark this at 2:30, your Honor, then I could impose upon the Government's interpreter.

MR. FRIED: Libya will not be here this afternoon, we will have another interpreter.

THE COURT: Will you be gone all afternoon?

MRS. CLANCY: I expect to be back by four o'clock.

MR. FISHER: When?

MRS. CLANCY: By four o'clock.

MR. FISHER: If there is another interpreter, it doesn't matter.

Make it 2:30.

THE COURT: We will have Mr. Rodriguez, if you are satisfied.

MR. FISHER: Set it for 2:30.

MR. FRIED: I think we will have an interpreter at 2:30.

THE COURT: 2:30, all right, 2:30.

MR. FISHER: Thank you.

MR. FRIED: This is the affidavit that I referred to that I would like to leave with the Court.

THE COURT: All right.

(The Baeza case was concluded for the morning of March 13, 1975.)

* * * * * *

I N D E X

Witnesses

None.

Exhibits

Government's

None

Defendant's

		For Id.	In Evid.
C	7-pg Document	336	
D	Document		338

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OPINION OF JUGDE MISHLER, DATED MARCH 27, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -

74 CR 14

UNITED STATES OF AMERICA

-against-

Memorandum of Decision and Order

CARLOS BAEZA,

Defendant.

March 27, 1975

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Defendant's motion challenges the in personam jurisdiction of this court on a claim that the court acquired jurisdiction over him through the unlawful conduct of American agents who allegedly procured his expulsion from Chile in violation of Chilean law and forcibly removed him to this court's jurisdiction. /1

The court held an evidentiary hearing. /2 The

/1 The motion is based on United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974) as explicated in United States ex rel. Lujan v. Gengler, __ F.2d __ (2d Cir. 1975). In Toscanino, the court directed an evidentiary hearing if the defendant " . . . offers some credible supporting evidence, including specifically that the action was taken by or at the direction of United States officials." (500 F.2d at 281).

/2 The right to a hearing under Toscanino is questionable since the defendant's testimony concerning participation by United States agents is rejected as incredible. The evidentiary hearing explored both the right to a hearing and the manner in which the United States obtained custody; any doubt was resolved in favor of the defendant.

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court finds the following facts:

Defendant was arrested at the direction of the Chief of the Chilean Police Narcotics Squad, Poblete, on November 8, 1973, together with co-defendant, Juan Jose Osorio, and approximately eleven other males, including defendant's father and uncle. The arrests occurred while they were attending the wedding of defendant's sister at 962 Islanda Street in Santiago, Chile. Agent George Franguille, in charge of the Drug Enforcement Administration office in Santiago, and Special Agent Charles Cecil, attached to the Santiago office, had conducted joint investigations concerning international trafficking in narcotics prior to November 8, 1973. Cecil advised Poblete that Osorio, Baeza and one Enrique Muñoz, were suspected of participating in the sale and distribution of cocaine in the United States through couriers.[3] Neither Mr. Cecil nor any other United States government agent requested Baeza's arrest. Cecil received a telephone call soon after the arrest from one Inspector Lopez of the Chilean Police

[3] During this period to the date of arrest by United States agents on May 4, 1974, and for a time thereafter, one Carlos Muñoz performed in an undercover capacity as a co-conspirator.

Narcotics Squad, advising him that Osorio, Baeza and others had been arrested. Cecil proceeded to Investigation Headquarters of the Chilean Narcotics Squad and arrived there at or about 9:00 or 10:00 A. M. on November 9, 1973. As he proceeded to Poblete's private office, Cecil saw Baeza for a few seconds. Baeza was facing the wall of a reception room with his hands handcuffed behind him. In Poblete's office, Cecil examined articles seized from those arrested and then left.

Baeza testified that he was held incommunicado and beaten and tortured in various ways.[14] The court makes

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[14] He claims he was brought to Investigation Headquarters at about 3:00 P. M. on November 8, 1973, handcuffed until 6:00 A. M. the next morning and kept without food. On the morning of November 9th, he and two others were placed in a cell measuring eight feet by nineteen feet located below the street level of the building. At about 8:00 A. M., a police officer announced Poblete's arrival, and the men in the cell were taken to the reception room in Poblete's office. At 10:30 A. M., the men were moved into the hallway where they saw Special Agent Cecil arrive with another man and enter Poblete's office. Baeza says that he was then taken to an underground room, where Cecil was present along with some Chilean policemen. He was there interrogated by Cecil concerning a narcotics laboratory and other matters relating to the narcotics business. When he refused or was unable to give any information, the policemen allegedly punched him six or seven times in the stomach. According to Baeza, the the police then strapped him to a table, blindfolded and gagged him, and attached electrodes to his forehead,

(continued on page 4)

no finding as to the truth of these allegations. Baeza also testified to a limited participation by Cecil in directing the questioning and the torture. The court rejects the testimony of Cecil's involvement as incredible and accepts Cecil's version of his visit to Investigation Headquarters on November 9, 1973.

On January 11, 1974, the indictment in the above case was filed in this court charging Baeza, Osorio, Enrique Muñoz and others, with a narcotics conspiracy. A warrant of arrest was issued for Baeza. Soon thereafter, Cecil advised Poblete of the charge and requested Baeza's arrest. Osorio, Enrique Muñoz, Baeza and three others

/4 (continued)

legs and genitals. When he indicated he was unable to supply information, an electric shock was sent through his body. At one point, he gagged on a dental plate which was in his mouth, and heard a voice that sounded like Cecil's say, "take it [the dental plate] out, because he could swallow it." The "shock treatment" was administered over a period of an hour for two or three seconds at a time with intermissions of a few moments punctuated with other indignities such as stepping on Baeza's stomach. At about 12:00 noon, he was returned to Poblete's office, where Poblete advised him that he, Poblete, had been ordered "by the Americans" to torture Baeza's entire family. Baeza testifed that he again was tortured on the morning of November 10, 1973. On the third day of his imprisonment, an agreement was reached to pay a bribe of $10,000 for the termination of the torture of those who had been arrested. On November 13, 1973, the bribe was paid, and Baeza was transfered to a different jail and then released on November 18, 1973.

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were arrested in Valparaiso at 4:00 A. M. on April 18, 1974. Baeza was held at three different institutions,[5] until May 4, 1974, when he was taken to the Santiago Airport. The Chilean Undersecretary of Interior had signed a decree dated May 2, 1974, directing the expulsion of Baeza and six others " . . . without further proceedings . . . ."[6] Chilean armed police conveyed Baeza and five others named in the expulsion order[7] to a Braniff International Airlines plan (flight No. 988) at the Santiago Airport. The prisoners boarded the plan handcuffed together in pairs. They were then turned "over to the custody of Cecil and five other

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[5] Baeza testified that he was booked under the name of Juan Donoso Fuentes by the police to thwart an anticipated writ of habeas corpus issued by the Chilean Supreme Court on his mother's petition. He claims that the police, angered by the complaint against them, beat him and forced excrement down his mouth.

[6] The decree bases the expulsion on a long criminal record of each expellee including " . . . robbery, theft, vagrancy, assault, falsification of public documents, housebreaking, attempted homicide, unauthorized possession of firearms, infraction of the foreign exchange law and traffic in narcotics." Baeza had no record of convictions. He was apparently booked on a charge of "falsification of public documents" after he was arrested on November 8,1973.

[7] Counsel for defendant advised the court that Sergio Lazo, one of those named, obtained a stay of the order from the Chilean Supreme Court.

Drug Enforcement Administration special agents," and seated in the first class section. Chilean police officers also accompanied the prisoners to John F. Kennedy International Airport in New York. At the request of Braniff International Airlines, a doctor, designated by the Chilean police and employed by the United States government, accompanied the flight and examined all the prisoners. Baeza was taken to Federal Detention Headquarters at West Street on May 5, 1974, and was examined there by medical personnel. He appeared before a judge of this court for arraignment on May 8, 1974. At no time did he complain to the doctor aboard the plane, to medical personnel at West Street, or to the district judge at the time of arraignment, of any mistreatment during either incarceration in Chilean jails. He retained Ivan Fisher, Esq., in the latter part of May, 1974. /8

/8 United States v. Toscanino was decided by the Court of Appeals for the Second Circuit in May, 1974. Ivan Fisher represented Toscanino. Fisher explained the Toscanino decision to Baeza. Baeza testified that he then told Fisher of the November 9, 1973 incident and that an American agent was present. He concedes he told Fisher the details of the torture only two days before this evidentiary hearing on the jurisdictional question. In the meantime, Alan Scribner, a member of Fisher's firm, filed an affidavit sworn to (or affirmed) on June 17, 1974, in which he challenges the jurisdiction of this court on the ground ". . . that Baeza was transported to the United States from Chile without formal extradition proceedings and in violation of Chilean law."

FPI—8S—3-17-72—30M—9153

United States v. Toscanino, 500 F.2d 267 (2d Cir. 1974), suggests that the burden of proving the allegations of forcible abduction rests with the defendant (500 F.2d at p. 281). Defendant has offered no credible evidence to sustain the allegations that United States agents requested or suggested, or in any way participated in Baeza's arrest of November 8, 1973, or were present at any time when any of the acts of which he complains were committed. The request for Baeza's arrest with the promise to the Chilean authorities of prosecution under the indictment cannot be considered an abduction. Custody by the United States was obtained through an expulsion order issued by the Chilean government. The expulsion order was the method chosen by the Chilean authorities to give custody of Baeza to the United States. No protest has been lodged under the Treaty between the United States and Chile, United States ex rel. Lujan v. Gengler, (Slip opinion p. 1205-1208). In Lujan the petitioner was lured from Argentina to Bolivia. In Bolivia, he was taken into custody by Bolivian police, who were "paid agents of the United States. Lujan was not permitted to communicate with the Argentine Embassy, an attorney or any member of his family." (Slip opinion p. 1199). He was held incommunicado for five days and then

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taken by Bolivian police, acting with American agents, to the airport to board a flight destined for New York. The court said (Slip opinion, p. 1204):

> Lacking from Lujan's petition is any allegation of that complex of shocking governmental conduct sufficient to convert an abduction which is simply illegal into one which sinks to a violation of due process./9

Present in the case at bar but lacking in Lujan, is an order of expulsion executed by a recognized power which is valid on its face./10 A collateral attack on the order cannot be heard here. Defendant's involuntary presence in the jurisdiction will not deprive the court of jurisdiction over the person, United States v. Sobell, 244 F.2d 520 (2d Cir. 1957), cert. denied, 355 U.S. 873, 78 S. Ct. 120 (1958), Frisbie v. Collins, 342 U.S. 179, 72 S.Ct. 509 (1952), Ker v. Illinois, 119 U.S. 435, 7 S.Ct. 2 (1886). The claim of illegality by Chilean police in Baeza's arrest is irrelevant to the jurisdictional issue, United States v.

/9 In Lujan, in testing the sufficiency of the petition, the court assumed all the allegations of the petition true for that purpose.

/10 On September 24, 1974, the United States recognized the junta that overthrew the Allende government.

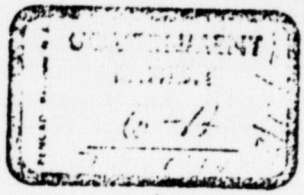
Herrera, 504 F.2d 859, (5th Cir. 1974).

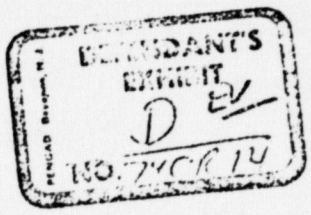
The motion is in all respects denied and it is SO ORDERED.

The motion was denied in an oral decision of the court on March 12, 1975. This memorandum of decision and order is filed nunc pro tunc.

U. S. D. J.

TRANSLATION OF CHILEAN LAW REGARDING EXPULSION





ginal
nguage:

ject:

t:

TRANSLATION

Spanish

Item on front page of DIARIO OFICIAL de la Republica de Chile, Santiago, November 6th, 1973.

ARTICLE 2.o- In matters covered by Article 418 of the Code of Military Law, such as during time and state of war and where the high interests of national security require such action, the Government may order the expulsion or abandonment of the country of pre-determined persons, whether (they be) foreigners or citizens on the basis of a soundly reasoned decree bearing the signatures of the Ministry of the Interior and of National Defense.

Those individuals who are the subjects of the expulsion or abandonment measures may freely choose their place of destination.

Transl. Ec

DIARIO OFICIAL
DE LA REPUBLICA DE CHILE

Núm. 28.694
Año XCVI

Santiago, Martes 6 de Noviembre de 1973
Edición de 16 páginas

Ejemplar del día . . . . . E° 50,—
Atrasado . . . . . » 100,—

A 392

ONLY COPY AVAILABLE

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Sin perjuicio de la responsabilidad penal, la autoridad dispondrá administrativamente y desde luego, consumado que sea el delito, la cancelación del pasaporte respectivo, si el inculpado se encontrare en el extranjero.

El llamamiento se notificará por su publicación en el Diario Oficial, fecha en que se presumirá conocido, de derecho, y el delito se [illegible] a la que correspondería en otro caso.

El Tribunal podrá asimismo, en tal evento, aplicar en lugar de la o las penas privativas de libertad que correspondieren la de extrañamiento por el doble del tiempo de duración de aquélla o aquéllas.

Artículo 2.o— En los casos contemplados en el Art. 418 del Código de Justicia Militar, como tiempo o estado de guerra, y cuando así lo requieran los altos intereses de la seguridad del Estado, el Gobierno podrá disponer la expulsión o abandono del país de determinadas personas, extranjeros o nacionales, por decreto fundado que llevará las firmas de los Ministros del Interior y de Defensa Nacional.

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Junta de Gobierno de la República de Chile

DECRETOS LEYES

Ministerio de Defensa Nacional

SUBSECRETARIA DE GUERRA

FIJA, POR RAZONES DE SEGURIDAD DEL ESTADO, SANCIONES PARA LAS PERSONAS QUE DESOBEDEZCAN EL LLAMAMIENTO PUBLICO QUE INDICA DEL GOBIERNO

Decreto ley No 81.— Santiago, 11 de Octubre de 1973.

— Vistos: Lo dispuesto en los decretos leyes N.os 1 y 5, de 11 de Septiembre de 1973, y

Considerando:

1.o— La necesidad de que las personas requeridas por la autoridad obedezcan el llamamiento que se les hace, por exigirlo la seguridad del Estado;

2.o— La conveniencia de sancionar penalmente y acorde con la seguridad del Estado la renuencia en el obedecimiento a ese llamamiento;

3.o— La necesidad, por otra parte, de velar por la seguridad del Estado, el orden interno y la normalidad de las actividades nacionales, en consonancia con la situación que el país vive y que los hechos descubiertos han evidenciado;

La Junta de Gobierno ha acordado y dicta el siguiente

extranjero.

El conocimiento del delito corresponderá a los Tribunales Militares y su juzgamiento se ajustará a las prescripciones del Código de Justicia Militar.

No eximirá ni atenuará la pena la circunstancia de que, de obedecer al llamamiento, el inculpado pueda verse expuesto al procesamiento por otros delitos.

Si el requerido por el Gobierno fuere responsable de delitos, el hecho de presentarse al llamamiento se considerará como circunstancia atenuante privilegiada respecto de esos delitos, debiendo el Tribunal imponer la pena inferior en un grado y pudiendo rebajarla en dos o tres grados, según la circunstancia,

ren abandonado su sujetarse a las normas establecidas, hubieren sido expulsados u obligados al abandono del país, o estuvieren cumpliendo penas de extrañamiento no podrán reingresar sin autorización del Ministro del Interior, la que deberá solicitarse a través del Consulado respectivo

El Ministro del Interior podrá denegar fundadamente, por razones de seguridad del Estado, la autorización solicitada.

Artículo 1.o— El que ingrese clandestinamente al país, burlando en cualquier forma el control de dicho ingreso, siempre que las circunstancias o antecedentes permitan presumir al Tribunal que lo hace para atentar contra la seguridad del Estado, será sancionado

A 394

TRANSLATION OF EXPULSION DECREE FOR CARLOS BAEZA

SPANISH INTO ENGLISH TRANSLATION 8/29/74

REPUBLIC OF CHILE
JUNTA GOVERNMENT
MINISTRY OF THE INTERIOR
DEPARTMENT OF FOREIGN AFFAIRS

Expels from the Country the persons indicated.-

DECREE NO. 807 /

hsr
-.T.-PGB.-

Santiago, May 2, 1974

THE JUNTA GOVERNMENT OF THE REPUBLIC OF CHILE, today decreed the following:

WHEREAS:

Mssrs. Jorge S. Dabed Sumar, Carlos Choy Ceballos, Sergio N. Poblete Mayorga, Rafael E. Mellafe Campos, Sergio Lazo Vargas, Carlos Baeza Baeza and Raul Selim Valenzuela, Chilean Nationals, devote themselves in Chile to the narcotics traffic, and are recognized internationally by said crime;

WHEREAS:

These persons could use the illlicitly-obtained income to put in danger the internal security of the state, the internal order and the normality of the national activities;

WHEREAS:

The Department of Order and Security of the Directorate of Carabineros Police, by Reserved Instrument No. 69, dated last April 24 and following a review of the antecedents of the persons mentioned, recommends their expulsion from the country;

WHEREAS:

The Directorate General of Investigations Police by instrument No. 91 of April 30 of this year, informs that each one of them has a long criminal record, included in which are the following crimes: fraud; theft, vagrancy, falsification of public documents housebreaking, attempted homicide, unauthorized possession of firearms, infraction of the foreign exchange law and traffic in narcotics, and

Pursuant to Article 2 of Legal Decree No. 81 of 1973,

BE IT DECREED THAT:

THE DIRECTORATE GENERAL OF INVESTIGATIONS will proceed to expel from the National Territory without further proceedings, the Chilean citizens, Messrs Jorge Segundo DABED SUMAR, Carlos CHOY CEBALLOS, Sergio Napoleon POBLETE MAYORGA, Rafael Enrique MELLAFE CAMPOS, Sergio LAZO VARGAS, Carlos BAEZA BAEZA and Raul SELIM VALENZUELA.

TAKE HEED AND COMMUNICATE.
BY ORDER OF THE GOVERNMENT JUNTA.
Oscar Bonilla Bradanovic, Divisonal Geenral, Ministry of the Interior, Patricio Carvajal Prado, Vice-Admiral, Ministry of National Defense.

Which (order) I copy to you for your information.

Greetings to you most attentively,
(Signed: illegibly)
ENRIQUE MONTERO MARX
Under-Secretary of the Interior

A 395

CC:

Judicial Office
Department of Foreign Affairs
Ministry of Foregin Affairs
Treasury Department
Identification Section
Investigations

File

Rubber STamps:

Ministry of the Interior - Chile
Chief - File Section

In accordance with its original

Ministry of the Inteiror
Judicial Office
May 3, 1974
FULLY PROCESSED

A 396

REPUBLICA DE CHILE
JUNTA DE GOBIERNO
MINISTERIO DEL INTERIOR
DEPTO. DE EXTRANJERIA
Nar.
"Transmisión"

EXPULSA DEL PAIS A PERSONAS QUE INDICA.-

DECRETO Nº 807.-/

SANTIAGO, 2 de Mayo de 1974.

La Junta de Gobierno de la República de Chile, decretó hoy lo que sigue :

TENIENDO PRESENTE :

Que, los señores Jorge S. Dabed Sumar, Carlos Choy Ceballos, Sergio N. Poblete Mayorga, Rafael E. Mellafe Campos, Sergio Lazo Vargas, Carlos Baeza Baeza y Raúl S. Slim Valenzuela, de nacionalidad chilena, se dedican en Chile a tráfico de estupefacientes, siendo éstos reconocidos internacionalmente por el referido delito;

Que, dichas personas, podrían utilizar los ingresos obtenidos ilícitamente para poner en peligro la seguridad Interior del Estado, el orden interno y la normalidad de las actividades nacionales;

Que, el Departamento de Orden y Seguridad de la Dirección de Carabineros, por oficio Reservado Nº 69, de fecha 24 de abril pasado, previo estudio de los antecedentes de las personas mencionadas, recomienda su espulsión del país;

Que, la Dirección General de Investigaciones, por oficio Nº 91, de 30 de abril del año en curso, informa que cada uno de ellos tiene un numeroso prontuario delictual, entre los cuales figuran los siguientes delitos: estafa, hurto, vagancia, agresión, falsificación de documentos públicos, violación de domicilio, homicidios frustrados, portar armas de fuego sin autorización, infracción a la Ley de Cambios Internacionales y tráfico de estupefacientes, y

De conformidad con lo dispuesto en el artículo 2º del Decreto Ley Nº 81, de 1973,

D E C R E T O :

La Dirección General de Investigaciones procederá a expulsar del territorio nacional, sin más trámites, a los ciudadanos chilenos señores Jorge Segundo DABED SUMAR, Carlos CHOY CEBALLOS, Sergio Napoleón POBLETE MAYORGA, Rafael Enrique MELLAFE CAMPOS, Sergio LAZO VARGAS, Carlos BAEZA BAEZA y Raúl SELIM VALENZUELA.

Tómese razón y comuníquese.

POR ORDEN DE LA JUNTA DE GOBIERNO,

OSCAR BONILLA BRADANOVIC, General de División, Ministro del Interior. PATRICIO CARVAJAL PRADO, Vicealmirante, Ministro de Defensa Nacional.

Lo que transcribo a Ud. para su conocimiento.

Saluda atentamente a Ud.

Partes
Depto. Extranjería
M.RR.EE.
Contraloría
Identificación
Investigaciones
Archivo.

DEL INTERIOR
SECCION
ARCHIVO
SEP 2
CHILE

MINISTERIO DEL INTERIOR
OFICINA DE PARTES
3 - MAY. 1974

GOVERNMENT EXHIBIT
2
77 CR 14

A 397

TREATY OF EXTRADITION BETWEEN THE UNITED STATES AND CHILE

April 17, 1900. *Treaty between the United States and Chile providing for the extradition of criminals. Signed at Santiago, April 17, 1900; ratification with amendments advised by the Senate, December 18, 1900; ratified by the President, May 24, 1902; ratified by Chile, February 26, 1902; ratifications exchanged at Washington, May 27, 1902; proclaimed May 27, 1902.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Preamble. Whereas a Treaty between the United States of America and the Republic of Chile providing for the extradition of fugitives from justice was concluded and signed by their respective Plenipotentiaries at Santiago, on the seventeenth day of April, one thousand nine hundred, the original of which Treaty, being in the English and Spanish languages is, (as amended by the Senate of the United States) word for word as follows:

Contracting parties. The United States of America and the Republic of Chile, being desirous to confirm their friendly relations and to promote the cause of justice, have resolved to conclude a treaty for the extradition of fugitives from justice between the United States of America and the Republic of Chile, and have appointed for that purpose the following Plenipotentiaries:

Plenipotentiaries. The President of the United States of America, Henry L. Wilson, Envoy Extraordinary and Minister Plenipotentiary of the United States in Chile, and the President of Chile, Señor Don Rafael Errázuriz Urmeneta, Minister of Foreign Relations of Chile.

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

Reciprocal delivery of persons charged with crimes. The Government of the United States and the Government of Chile mutually agree to deliver up persons who, having been charged

Los Estados Unidos de América i la República de Chile, deseando confirmar sus amistosas relaciones i promover la causa de la justicia, han resuelto celebrar un tratado para la estradicion de los prófugos de la justicia entre los Estados Unidos de América i la República de Chile, i han nombrado al efecto los siguientes Plenipotenciarios:

El Presidente de los Estados Unidos de América, al señor Henry L. Wilson, Enviado Estraordinario i Ministro Plenipotenciario de los Estados Unidos en Chile, i el Presidente de la República de Chile, al señor don Rafael Errázuriz Urmeneta, Ministro de Relaciones Esteriores de Chile:

Quienes, después de comunicarse sus respectivos Plenos Poderes, que encontraron en buena i debida forma, han acordado i concluido los artículos siguientes:

ARTÍCULO I.

El Gobierno de los Estados Unidos i el Gobierno de Chile convienen en entregarse mútuamente las personas que, habiendo sido acusa-

with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense had been there committed.

ARTICLE II.

Extradition shall be granted for the following crimes and offenses:

1. Murder, comprehending assassination, parricide, infanticide, and poisoning; attempt to commit murder; manslaughter, when voluntary.

2. Arson.

3. Robbery, defined to be the act of feloniously and forcibly taking from the person of another money, goods, documents or other property by violence or putting him in fear; burglary.

4. Forgery, or the utterance of forged papers; the forgery or falsification of official acts of Government, of public authorities, or of courts of justice, or the utterance of the thing forged or falsified.

5. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or of coupons thereof, or of bank notes or the utterance or circulation of the same; or the counterfeiting, falsifying or altering of seals of state.

6. Embezzlement by public officers; embezzlement by persons hired or salaried, to the detriment of their employers where in either class of cases the embezzlement exceeds the sum of two hundred dollars; larceny.

7. Fraud or breach of trust by a bailee, banker, agent, factor,

das o condenadas por alguno de los crimenes o delitos especificados en el articulo siguiente, i cometidos dentro de la jurisdiccion de una de las Partes Contratantes, busquen asilo o se encuentren en los territorios de la otra; siempre que ello se haga solo en virtud de pruebas tales de culpabilidad que, segun las leyes del lugar donde el prófugo o la persona acusada se encuentre, habria habido mérito para su aprehension i enjuiciamiento, si allí se hubiera cometido el crimen o delito.

ARTÍCULO II.

Se considerá la estradicion por los siguientes crimenes i delitos: Extraditable crimes.

1. Homicidio, comprendiendo el asesinato, parricidio, infanticidio i envenenamiento; tentativa de homicidio, homocidio impremeditado pero voluntario. Murder, etc.

2. Incendio. Arson.

3. Robo, definido como acto de quitar maliciosa i forzadamente dinero, bienes, documentos u otra propiedad a otra persona, con violencia o intimidacion en ella; robo con fuerza en las cosas. Robbery, etc.

4. Falsificacion, o circulacion de papeles falsificados; imitacion o falsificacion de documentos oficiales del Gobierno, de las autoridades públicas o de los tribunales de justicia, o la circulacion de la cosa imitada o falsificada. Forgery.

5. El delito de contrahacer, falsificar o alterar monedas, sea de metal o papel, de instrumentos de crédito creados por el gobierno nacional, por el de un estado, provincia o municipalidad, o de sus cupones, o de billetes de banco, o la emision o circulacion de los mismos; o el delito de contrahacer, falsificar o alterar sellos del Estado. Counterfeiting, etc.

6. Malversacion cometida por empleados públicos; malversacion cometida por personas contratadas o asalariadas, en detrimento de sus patrones; siempre que en uno i otra clase de casos la malversacion exceda de la suma de doscientos pesos de 48d; hurto. Embezzlement.

7. Fraude o abuso de confianza de un depositario, banquero, Breach of trust, etc.

trustee, or other person acting in a fiduciary capacity, or director or member or officer of any company, when such act is made criminal by the laws of both countries and the amount of money or the value of the property misappropriated is not less than two hundred dollars.

Perjury.

8. Perjury; subornation of perjury.

Rape, etc.

9. Rape; abduction; kidnapping.

Injuries to railroads.

10. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

Crimes committed at sea.

11. Crimes committed at sea.

Piracy.

(a) Piracy, by statute or by the laws of nations.

Revolt, etc.

(b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.

Destroying vessels, etc.

(c) Wrongfully sinking or destroying a vessel at sea, or attempting to do so.

Assaults on ship board.

(d) Assaults on board a ship on the high seas with intent to do grievous bodily harm.

Slave trading, etc.

12. Crimes and offenses against the laws of both countries for the suppression of slavery and slave trading.

Complicity.

Extradition is also to take place for participation in any of the crimes and offenses mentioned in this Treaty, provided such participation may be punished, in the United States as a felony, and in the Republic of Chile by imprisonment at hard labor.

ARTICLE III.

Requisitions.

Requisitions for the surrender of fugitives from justice shall be made by the diplomatic agents of the contracting parties, or in the absence of these from the country or its seat of government, may be made by the superior consular officers.

Copy of sentence or warrant.

If the person whose extradition is requested shall have been convicted of a crime or offense, a duly authenticated copy of the sentence of the court in which he was con-

ajente, factor, tenedor be bienes u otra persona que obre en carácter fiduciario, o de un director, miembro o empleado de una compañia, cuando las leyes de ambos paises declaran criminoso semejante acto i el dinero o el valor de los bienes defraudados no es inferior a doscientos pesos de cuarenta i ocho peniques.

8. Perjurio; instigacion a perjurar.

9. Violacion; rapto; sustraccion de personas.

10. Destruccion u obstruccion voluntaria e ilegal de ferrocarriles, poniendo en peligro la vida de personas.

11. Delitos cometidos en el mar.

(a) Pirateria, segun la lei o el Derecho Internacional.

(b) Motin, o conspiracion para amotinarse de dos o mas personas a bordo de un buque en alta mar contra la autoridad del capitan.

(c) Sumersion o destruccion dolosa de un buque en el mar, o tentativa de hacerlo.

(d) Atentados a bordo de un buque en alta mar con el propósito de causar daño corporal grave.

12. Crimenes i delitos contra las leyes de ambos paises relativas a la supresion de la esclavitud i a la trata de esclavos.

Tambien habrá lugar a la estradicion por la participacion en cualquiera de los crimenes i delitos mencionados en este Tratado, siempre que dicha participacion sea castigada, en los Estados Unidos como una felonía, i en la Rupública de Chile, con presidio u otras penas mayores.

ARTÍCULO III.

La demanda de entrega de prófugos de la justicia, se hará por los ajentes diplomáticos de las Partes Contratentes, o si estuvieren ausentes del pais o de la residencia del Gobierno, podrán hacerla los funcionarios consulares superiores.

Si la persona cuya estradicion se solicita hubiere sido condenada por el crimen o delito, se exhibirá una copia debidamente autenticada de la sentencia del tribunal que io haya

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victed, or if the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime has been committed, and of the depositions or other evidence upon which such warrant was issued, shall be produced.

The extradition of fugitives under the provisions of this Treaty shall be carried out in the United States and in the Republic of Chile, respectively, in conformity with the laws regulating extradition for the time being in force in the state on which the demand for surrender is made.

Proceedings.

condenado, o, si el prófugo estuviere simplemente acusado del crimen, se exhibirá una copia debidamente autenticada de la órden de arresto espedida en el pais donde se ha cometido el crimen, i de las declaraciones u otras pruebas que han dado mérito a dicha órden.

La estradicion de prófugos en virtud de las disposiciones de este Tratado, se efectuará en los Estados Unidos i la República de Chile, respectivamente, de acuerdo con las leyes que sobre estradicion estuvieren entónces vijentes en el Estado a quien se dirija la solicitud de entrega.

ARTICLE IV.

Where the arrest and detention of a fugitive are desired on telegraphic or other information in advance of the presentation of formal proofs, the proper course in the United States shall be to apply to a judge or other magistrate authorized to issue warrants of arrest in extradition cases and present a complaint on oath, as provided by the statutes of the United States.

Applications for provisional arrest.

In the United States.

When, under the provisions of this article, the arrest and detention of a fugitive are desired in the Republic of Chile, the proper course shall be to apply to the Foreign Office, which will immediately cause the necessary steps to be taken in order to secure the provisional arrest or detention of the fugitive.

In Chile.

The provisional detention of a fugitive shall cease and the prisoner be released if a formal requisition for his surrender, accompanied by the necessary evidence of his criminality has not been produced under the stipulations of this Treaty, within two months from the date of his provisional arrest or detention.

Discharge on failure to make formal requisition within two months.

ARTÍCULO IV.

Si el arresto i detencion de un prófugo se desearen por parte telegráfico o de otro modo anticipándose a la presentacion de las pruebas formales, la via adecuada en los Estados Unidos consistirá en dirijirse a un juez u otro majistrado autorizado para librar órdenes de arresto, en causas de estradicion, i, en presentar una querella bajo de juramento, segun lo disponen las leyes de los Estados Unidos.

Cuando, en virtud de las prescripciones de este artículo, el arresto i detencion de un prófugo se desearen en la República de Chile, la via adecuada consistirá en dirijirse al Ministerio de Relaciones Esteriores, el cual dispondrá inmediatamente que se den los pasos necesarios para asegurar el arresto o detencion provisional del prófugo.

La detencion provisional del prófugo cesará i el preso será puesto en libertad si dentro de dos meses contados desde la fecha de su arresto o detencion provisionales, no se hubiere formalizado, segun las estipulaciones de este Tratado, la reclamacion de su entrega acompañada de las pruebas necesarias de su culpabilidad.

ARTICLE V.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this Treaty.

Neither party bound to deliver up its own citizens.

ARTÍCULO V.

Ninguna de las Partes Contratantes estará obligada a entregar a sus propios ciudadanos en virtud de las estipulaciones de este Tratado.

ARTICLE VI.

No surrender for political offenses.

A fugitive criminal shall not be surrendered if the offense in respect of which his surrender is demanded be of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for an offense of a political character.

Political offenses prior to extradition.

No person surrendered by either of the high contracting parties to the other shall be triable or tried, or be punished, for any political crime or offense, or for any act connected therewith, commited previously to his extradition.

Decision.

If any question shall arise as to whther a case comes within the provisions of this article, the decision of the authorities of the government on which the demand for surrender is made, or which may have granted the extradition, shall be final.

ARTICLE VII.

No delivery if trial barred by limitation.

Extradition shall not be granted, in pursuance of the provisions of this Treaty if legal proceedings or the enforcement of the penalty for the act committed by the person claimed has become barred by limitation, according to the laws of the country to which the requisition is addressed.

ARTICLE VIII.

Trial to be only for offenses for which extradited.

No person surrendered by either of the high contracting parties to the other shall, without his consent, freely granted and publicly declared by him, be triable or tried or be punished for any crime or offense committed prior to his extradition, other than that for which he was delivered up, until he shall have had an opportunity of returning to the country from which he was surrendered.

ARTICLE IX.

Disposition of articles seized with person.

All articles seized which are in the possession of the person to be surrendered at the time of his

ARTICULO VI.

No será entregado el criminal fujitivo si el delito con respecto al cual se solicita su entrega, es de carácter politico, o si prueba que la reclamacion de su entrega se ha formulado en realidad con el objeto de enjuiciarlo o castigarlo por un delito de carácter politico.

Ninguna persona entregada por una de las Altas Partes Contratantes a la otra, podrá ser acusada o enjuiciada o castigada por algun crimen o delito politicos o por algun acto relacionado con ellos, cometido con anterioridad a su estradicion.

Dado que surjiere cualquiera cuestion acerca de si un caso cae bajo las disposiciones de este articulo, será definitiva la decision que adopten las autoridades del Gobierno a quien se ha dirijido la solicitud de entrega o que haya concedido la estradicion.

ARTÍCULO VII.

No se concederá la estradicion en conformidad a las disposiciones de este Tratado, si los procedimientos legales o la aplicacion de la pena correspondiente al hecho cometido por la persona reclamada, hubieren quedado escluidos por prescripcion, de acuerdo con las leyes del pais a que se ha dirijido el reclamo.

ARTÍCULO VIII.

Ninguna persona entregada por una de las Partes Contratantes a la otra podrá, sin el consentimiento prestado por ella libre i públicamente ser acusada o enjuiciada o castigada por otro crimen o delito cometido ántes de su estradicion que aquel por el cual ha sido entregada, hasta tanto que no haya tenido oportunidad para regresar al pais de que ha sido estraida.

ARTÍCULO IX.

Todos los objetos secuestrados que al tiempo de la aprehension se hallaren en poder de la persona

apprehension, whether being the proceeds of the crime or offense charged, or being material as evidence in making proof of the crime or offense, shall, so far as practicable and in conformity with the laws of the respective countries, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to such articles shall be duly respected.

reclamada, ya sean fruto del crimen o delito imputados, o piezas que puedan servir de prueba del crimen o delito, deberán, en cuanto fuere practicable i conforme a las leyes de los respectivos países, entregarse al tener lugar la estradicion. Sin embargo se respetarán debidamente los derechos de terceros en órden a esos objetos.

ARTICLE X.

If the individual claimed by one of the high contracting parties, in pursuance of the present Treaty, shall also be claimed by one or several other powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to the state whose demand is first received: Provided, that the government from which extradition is sought is note bound by treaty to give preference otherwise.

Persons claimed by two or more countries.

ARTÍCULO X.

Si el individuo reclamado por una de las Altas Partes Contratantes, en conformidad al presente Tratado, fuere reclamado tambien por una o varias otras Potencias en razon de crímenes o delitos cometidos dentro de sus respectivas jurisdicciones, su estradicion se concederá al Estado cuya solicitud se haya recibido primero, siempre que el Gobierno de quien se solicite la estradicion no esté sujeto por tratado a dar preferencia a otro.

ARTICLE XI.

The expenses incurred in the arrest, detention, examination, and delivery of fugitives under this Treaty shall be borne by the state in whose name the extradition is sought: Provided, that the demanding government shall not be compelled to bear any expense for the services of such public officers of the government from which extradition is sought as receive a fixed salary; And, provided, that the charge for the services of such public officers as receive only fees or perquisites shall not exceed their customary fees for the acts or services performed by them had such acts or services been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

Expenses.

ARTÍCULO XI.

Los gastos ocasionados por el arresto, detencion, exámen i entrega de los prófugos en virtud de este Tratado, serán de cargo al Estado en cuyo nombre se pida la estradicion; siendo entendido que el Gobierno solicitante no estará obligado a hacer ningun desembolso por servicios de los empleados públicos del Gobierno a quien se pida la estradicion, que perciben sueldo fijo; i bien entendido que el gravámen por los servicios de los empleados públicos que solo perciben derechos o emolumentos, no excederá el de sus aranceles acostumbrados en los actos o servicios ejecutados por ellos como si dichos actos o servicios lo hubieran sido en procedimientos criminales ordinarios a virtud de las leyes del país del cual son empleados.

ARTICLE XII.

The present treaty shall take effect on the thirtieth day after the date of the exchange of ratifications, and shall remain in force for a period of ten years from that date; and in case neither of the high contracting parties shall have given notice one year before the expiration of that period of its intention to terminate the treaty, it shall remain in force until one year from the date on which either of the high contracting parties shall have given notice to the other of such intention.

Effect.

ARTÍCULO XII.

El presente Tratado empezará a rejir el trijésimo dia despues de la fecha en que se hayan canjeado

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fications, and shall not opperate retroactively.

Exchange of ratifications.

The ratifications of the present Treaty shall be exchanged at Washington as soon as possible, and it shall remain in force for a period of six months after either of the contracting governments shall have given notice of a purpose to terminate it.

Signatures.

In witness whereof, the respective Plenipotentiaries have signed the above articles, both in the English and Spanish languages, and have hereunto affixed their seals.

Done in duplicate, at the city of Santiago, this 17th day of April 1900.

HENRY L WILSON [SEAL.]

las ratificaciones, i no tendrá efecto retroactivo.

Las ratificaciones del presente Tratado se canjearán en Washington tan pronto como sea posible, i éste permanecerá en vigor hasta seis mesas despues que cualquiera de los Gobiernos Contratantes haya notificado al otro su intencion de ponerle término.

En fé de lo cual los respectivos Plenipotenciarios han firmado los artículos precedentes en los idiomas ingles i español, i puesto al pié sus sellos.

Hecho por duplicado en la ciudad de Santiago, a los 17 dias de abril de 1900.

R. ERRÁZURIZ URMENETA [SEAL.]

Ratification.

And whereas the said Treaty (as amended by the Senate of the United States) has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the City of Washington, on the twenty-seventh day of May, one thousand nine hundred and two;

Proclamation.

Now therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article and clause thereof, (as amended) may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the City of Washington, this twenty-seventh day of May in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty sixth.

[SEAL.]

THEODORE ROOSEVELT

By the President:
JOHN HAY
Secretary of State.

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